Supreme Court, U.S.
FILED

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No. _____

In The
Supreme Court of the United States

SEEMA L. MISHRA, M.D., et al.,

Petitioners,

v.

DOCTOR'S HOSPITAL OF AUGUSTA, LLC, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. In this action for declaratory relief for a meaningful declaration of rights in the face of litigation, to determine whether Plaintiff was an employee under an employment contract with no arbitration clause, that evidence showed she performed, or whether she was an independent contract physician, who owned her own practice and was borrower, under a Stark safe haven physician recruitment loan, with an arbitration clause, but with no delegation clause, was it error to compel arbitration without first making gateway determinations under 9 U.S.C. § 4 and as part of the declaratory relief sought, and where there were independent reasons to find the underlying agreement did not exist arising out of and attaching to parties associated with the employment contract and a joint venture?

II. Was it error not to use Article III prudential jurisdiction to prevent arbitration as to the Stark Act interests or compulsory servitude until to hold arbitration was consistent with public policy and law?

III. Was it error to find that the arbitrator did not exceed his authority, where he used language from the separate employment contract to account for the fact that material Stark safe harbor loan conditions were not met, where that was not permitted under the document with the arbitration clause?

IV. Was it error to grant judgment to the Hospital without first giving Plaintiff her day in court as to the claims existing outside the reach of arbitration, if any were covered by arbitration?

LIST OF PARTIES – RULE 14.1(b) STATEMENT

The following were parties to the proceedings in the United States Court of Appeals for the Eleventh Circuit:

1. Seema Mishra, M.D. – Plaintiff-Appellant, Petitioner
2. Seema Mishra, M.D. in representative capacity for patients, both private pay and those receiving Medicaid or Medicare for the federal government or financial assistance for health care from the State of South Carolina – Plaintiffs-Appellants, Petitioners
3. The Center for Primary Care, Inc. – Defendant-Appellee, Respondent
4. Jim C. Larson, Jr. – Defendant-Appellee, Respondent
5. HCA Inc. – Defendant-Appellee, Respondent
6. Doctors Hospital of Augusta, LLC – Defendant-Appellee, Respondent
7. d/b/a Doctors Hospital of Augusta – Defendant-Appellee, Respondent
8. John Doe, or any agent of HCA, Inc. – Defendant-Appellee, Respondent
9. Galen Holdco, LLC (parent company of Doctors Hospital of Augusta) – Defendant-Appellee, Respondent
10. Healthtrust, Inc. (parent company of Galen Holdco, LLC) – Defendant-Appellee, Respondent
11. The Hospital Company (parent company of Doctors Hospital of Augusta) – Defendant-Appellee, Respondent
12. Hercules Holding II, LLC (Majority Shareholder of HCA Inc.) – Defendant-Appellee, Respondent

13. Bain Entities (shareholder of Hercules Holding II, LLC (majority of shareholder of HCA Inc.) – Defendant-Appellee, Respondent
14. Bank of America/ML Entities (shareholder of Hercules Holding II, LLC (majority of shareholder of HCA Inc.) – Defendant-Appellee, Respondent
15. Frist Group (shareholder of Hercules Holding II, LLC (majority of shareholder of HCA Inc.) – Defendant-Appellee, Respondent
16. Citigroup Entities (shareholder of Hercules Holding II, LLC (majority of shareholder of HCA Inc.) – Defendant-Appellee, Respondent

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(TJOFLAT, J., EDMONDSON, J.,
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District Court order compelling arbitration as between only Dr. Mishra and Doctors Hospital. *Mishra v. Doctor's Hospital of Augusta, LLC*, No. 1:05-CV-101 (S.D. Ga. July 18, 2006) (Order compelling arbitration) (R6-86) 1a.[1] This order was timely appealed August 17, 2006. (R7-89).

Sua sponte the Eleventh Circuit dismissed, finding that the July 18, 2006 Order (R6-86) (1a) "compelling arbitration, staying the case, and dismissing some, but not all, defendants, was not final and appealable. See 9 U.S.C. § 16(b)(cites omitted)." *Mishra v. Doctor's Hospital of Augusta, LLC*, No. 06-14552-G (11th Cir. October 4, 2006) (R7-91) (63a).

District Court order denying reconsideration of the order compelling arbitration finding Petitioner "presented no [such] evidence" to make a "colorable" claim that the Stark Safe-Harbor Loan did not exist. *Mishra v. Doctor's Hospital of Augusta, LLC*, No. 1:05-CV-101 (S.D. Ga. October 16, 2006) (R7-92) 78a, 79a.

The Eleventh Circuit denied a motion for reconsideration of the *sua sponte* dismissal. *Mishra v. Doctor's Hospital of Augusta, LLC*, No. 06-14552-G (11th Cir. December 13, 2006) (R7-99) 81a.

Arbitration as between Dr. Mishra and Doctors Hospital was held December 7, 2007. Findings of Fact and Conclusions of Law were entered by the arbitrator April 16, 2008, finding in favor of Doctors Hospital. *Doctors Hospital of*

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[1] Reference to pages in the separate Appendix will be "[page number]a."

Augusta, LLC v. Seema L. Mishra, M.D., American Health Lawyers' Association Case No. A-042407-522 (Findings of Fact and Conclusions of Law April 16, 2008) (Oakley, Arb.) (R9-103 Ex. A or 103-1) 12a-42a.

The District Court confirmed the arbitration award March 26, 2009, finding in favor of Drs. Hospital against Dr. Mishra. *Mishra v. Doctor's Hospital of Augusta, LLC*, No. 1:05-CV-101 (S.D.Ga. March 26, 2009) (Order confirming arbitration award) (R9-127) 43a-55a.

On April 17, 2009, the District Court entered an order and judgment awarding principal and pre-judgment interest, on principal and attorney's fees, to Doctors Hospital-HCA. *Mishra v. Doctor's Hospital of Augusta, LLC*, No. 1:05-CV-101 (S.D.Ga. April 17, 2009) (R9-129) (56a) and (R9-130) (judgment) 116a.

A timely Notice of Appeal and an amended Notice of Appeal correcting a typo, were filed May 13, 2009. *Mishra v. Doctor's Hospital of Augusta, LLC*, No. 1:05-CV-101 (S.D.Ga. May 13, 2009) (R9-134).

The Eleventh Circuit issued its unpublished panel opinion on December 3, 2009, affirming the District Court's confirmation of the award to Doctors Hospital. *M.D. Seema L. Mishra v. Doctors Hospital of Augusta, LLC*, No. 09-12548 (11th Cir. December 3, 2009) (TJOFLAT, J., EDMONDSON, J., and HILL, J.). 60a.

A timely Petition for Rehearing or Rehearing *En Banc*, was filed December 24, 2009. *M.D. Seema L. Mishra v. Doctors Hospital of Augusta, LLC*, No. 09-12548 (11th Cir. December 24, 2009).

The panel denied rehearing on March 30, 2010. *M.D. Seema L. Mishra v. Doctors Hospital of*

Augusta, LLC, No. 09-12548 (11th Cir. March 30, 2010). 76a.

BASIS OF COURT'S JURISDICTION, TIMELINESS OF PETITION, AND ORIGINAL ACTION JURISDICTION

Petitioner certifies service upon the Solicitor General, Agency Director, and the Attorney General for the State of Georgia under Rule 29.4.

Jurisdiction for the Petition is based on 28 U.S.C. § 1254(1).

This is an appeal of an order compelling arbitration. 9 U.S.C. § 16(b); *see also Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985) (granting certiorari after Court of Appeals affirmed in part and reversed in part order of district court compelling arbitration and remanded to district court for further proceedings).

The Petition for Certiorari is timely filed because the Petition was deposited in the mail or expedited delivery service on June 28, 2010, which is 90 days from March 30, 2010 (Sup. Ct. R. 13.1), when the Eleventh Circuit denied the timely filed Petition for Rehearing or Rehearing *En Banc*. *M.D. Seema L. Mishra v. Doctors Hospital of Augusta, LLC*, No. 09-12548 (11th Cir. Mar. 30, 2010). 76a.

The basis for jurisdiction in the court of first instance was under 28 U.S.C. §§ 2201 (declaratory and injunctive relief), 1331 (federal question), 1332 (diversity), 1343 (civil rights deprivations), and 1367 (supplemental). (R5-48-2) (First Amended Complaint).

The pleadings (R1-1 and R5-48) alleged Mishra was a resident of South Carolina and that she had signed an Employment Contract in October 2003 (132a-143a) with Respondent, The Center for Primary Care ("The Practice"), to work as an

employee at new office the existing practice opening in North Augusta, South Carolina. The evidence showed that in fact she did work as an employee under an Employment Contract – with no arbitration clause -- for the employer The Practice (132a-143a) and received only her salary and a small amount for moving expenses (197a, 198a, 201a), but nothing from the challenged loan and then was terminated in December 2004.

Mishra alleged she was fraudulently induced (R5-48-18 ¶ 139) to sign the Recruiting Agreement loan by a breach of fiduciary duty by The Practice and Respondent manager Jim Larson, under the operation of the Employment Contract, with no arbitration clause. Parties associated with the Employment Contract caused Mishra to sign the Stark Safe Harbor Recruiting Agreement Loan documents as an express condition of the Employment Contract (132a, Third Whereas clause) and by verbal representations that Larson had checked the Recruitment agreement documents, that the Hospital was helping with funding, "that it was all OK," and that it was in Mishra's "best interest to sign," and that the papers were "just like the papers that everyone in the practice had to sign, and that they all had done it." (122a).

The legal capacity and rights conflict as to whether she was an employee or independent contractor owner, requiring declaratory action, arises because in the Recruitment Agreement loan she had to "agree to relocate" and have the capacity of a physician "initiating a start-up initial practice" (175a) as an "independent contractor" (160a) of "his/her" practice (158a, 181a) and therefore owner, and borrower (167a, 172a). This is contrary to performance, where Dr. Mishra was performing as

an employee of The Practice. This is a capacity question for the court, if *Chastain v. Robinson-Humphrey Co.*, 957 F.2d 851 (11th Cir. 1992) is analogized as to the principle that the court decides legal capacity signing questions where clear policy exists, that she did not have the requisite Stark Safe Harbor capacity. *See W.R. Grace & Co. v. Rubber Workers, 461 U.S. 757, 103 S.Ct. 2177(1983).*

In separate and conflicting ways The Recruiting Agreement loan lists Augusta, Georgia (158a, 181a) and North Augusta, South Carolina (177a) as "the Community" to which Dr. Mishra was relocating.

Mishra did receive the loan principal, a failed Stark condition precedent. There are four checks paid to the order of CPC Attn (not "and") Dr. Mishra (R4-37-1 p. 16, 21, 26, 31) and three to Dr. Mishra with CPC in a line below, with no "and" or an "or," (R4-37-1 p. 37, 42, 45) but all checks were deposited in CPC's account, and returned to Drs. Hospital, including a "sign on" bonus of $20,000, that Mishra never received. R4-37-1 p.16. They were produced in discovery. R4-37. Mishra's declaration shows that she only received salary and a small amount of relocation pay. 197a-198a ¶4, 201a ¶¶29-31.

No Respondent has submitted evidence that Mishra received any of the loan principal. The record shows that Mishra only received salary to which she was entitled under the independent Employment Contract.

Petitioner Mishra like any borrower in any loan cannot, consistent with due process be subjected to further court control as to personal servitude, and a duty to repay a loan where she has shown that the lender knowingly paid the loan principal to a third party, and there was no evidence that it was "passed

through to" or controlled by the purported borrower, as required under the agreement. Therefore a court should decide whether the loan existed as to Mishra.

In the letter from counsel for The Hospital in June 2005 demanding arbitration, referring to paragraph 10 of the Employment Contract, to cover the fact that Mishra received no loan principal, The Hospital states:

> ...Your statement that "all payments were made to the Center for Primary Care" is incorrect. The checks prepared by the Hospital were made payable to "Seema L. Mishra, M.D." and to the "Center for Primary Care, Attn. Seema L. Mishra, M.D." Dr. Misrha's name was set forth on every check. Moreover, Dr. Mishra agreed in section 10 of her Employment Contract with the Practice that all payments under the Recruiting Agreement and Related Documents were to be made to the Practice...

R4-37-2. Before the Safe Harbor provisions of the Stark Act are met the performance must show that loan principal was "passed directly through to or received by" the physician independent contractor borrower. 42 C.F.R. 411.357(e)(4)(ii), The Hospital relied on terms in the separate Employment Contract, (139a & 140a; 151a & 152a) reflecting performance is hopelessly in conflict with the Recruiting Agreement, suggesting failure and material element or of a meeting of the minds. By express language of their Recruiting Agreement, the language from the Employment Contract cannot be a part of a Recruiting Agreement Loan. The

Recruiting Agreement Loan documents have a merger clause, (R4-37 p. 27 & 36; 163a, 183a) meaning that no other writings define the intent of the parties. The Employment Contract also has a merger clause, which excludes incorporation of the Recruiting Agreement. 154a.

The Arbitration was demanded under O.C.G.A. § 9-9-6(c) and warned Mishra that she:

> ...shall be precluded from denying the validity of the agreement between the parties or compliance therewith or from asserting limitation of time as a bar in court unless she makes application to the court within thirty (30) days for an order to stay arbitration...

Id. The Hospital relied on O.C.G.A. § 9-9-6(c)(3).

Where the District Court gave preference to the processing of Recruiting Agreement and never gave legal effect to the Employment Contract, this showed a procedural and resulting substantive preference to the Agreement with an arbitration clause, that had no delegation clause, that the record shows did not exist, that violates the principle of *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 109 S.Ct. 1248 (1989) that agreements with arbitration clauses not be given special treatment.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

U.S. CONST. ART I § 8 CL. 3

U.S. CONST. AMEND. I

U.S. CONST. AMEND. XIII §§ 1 & 2

U.S. CONST. AMEND. XIV § 1

28 U.S.C. § 2201 (Declaratory and Injunctive Relief)

42 U.S.C. § 1395nn (Stark Act)

42 U.S.C. § 1320a-7b (Anti-Kickback Act)

42 C.F.R. 411.357(e)(4)(ii) (Stark Safe-Harbor Physician Recruitment Reg.)

42 U.S.C. § 1994 (voluntary and involuntary peonage abolished and such debts void)

18 U.S.C. § 1589 (abuse or threatened abuse of law or legal process prohibited)

9 U.S.C. § 1

9 U.S.C. § 2

9 U.S.C. § 3

9 U.S.C. § 4

9 U.S.C § 10

STATEMENT OF THE CASE

PROCEEDINGS BELOW

On June 10, 2005, HCA sent a letter to counsel for Dr. Mishra demanding arbitration under O.C.G.A. § 9-9-6(c), (R1-1 p.4) and the rules for alternative dispute resolution of the American Health Lawyers Association, citing Par. 13 of the "Recruiting Agreement," which in pertinent part reads:

> 13. Any controversy or claim arising out of or related to this agreement, or any breach thereof, shall be settled by arbitration in accordance with the rules and procedures of alternative dispute resolution and arbitration established by the Alternative Dispute Resolution Service of the American Health Lawyers Association ("AHLA"), and judgment upon an award rendered may be entered in any court having jurisdiction thereof.

There is no delegation clause, therefore enforceability and existence issues are for the court. There is only a scope clause relating to "this agreement" if it is enforceable or is made. In addition O.C.G.A. § 9-9-6(c)(3) dictates that unless an action is filed in court within thirty days, one is "precluded from denying the validity of the agreement."

Petitioner plaintiff filed her initial complaint and decoration in support. (R1-1 and R1-3).

Respondent Doctors Hospital ("Drs. Hospital" or "The Hospital") filed a motion to dismiss or in the alternative to stay litigation and compel arbitration. (R1-9 & 10). The Hospital did not support their

motion with any declarations or other proof showing that Dr. Mishra had received the loan principal. Instead they relied on Plaintiff's documents.

They put forward no evidence to rebut the inference supporting a conclusion of a failed condition precedent, where in the face of resistance to arbitration The Hospital must demonstrate that the alleged borrower received or controlled the loan principal, before any duty of servitude to repay or to pay would attach.

In the first amended complaint (R5-48) Petitioner sought injunctive and declaratory relief through the following claims:

I. The Recruiting Agreement was void due to substantive and procedural unconscionability: (R5-48-12 & 13);

II. The contract was substantively unconscionable alleging it made a former employee a guarantor of the loan kept and received by a former employer arising out of the Employment Contract and abuse of that relationship. R5-48-13.

III. Alleged that O.C.G.A. § 9-9-2 (c)(9) requires that any contract arising out of an employment relationship with an arbitration clause be initialed to be valid (R5-48-13 & 14), where under the Tenth amendment states have authority to protect citizens from unwitting involuntary servitude through arbitration process, and that the same was not hostile to arbitration. R5-48-14.

IV. Asserted a failure of consideration because no loan principal was controlled by Dr. Mishra. R5-48-14 & 15.

V. Plaintiff asserted there was no new consideration as to the conditions that "her" practice be in Augusta, Georgia.

VI. Plaintiff asserted a right not to be subjected to compulsory servitude in violation of due process and equal protection, the right to travel and to free association with patients from South Carolina, under the First Amendment, and she asserted rights under the Thirteenth amendment prohibiting compulsory servitude. R5-48-17.

VII. Plaintiff asserted the dormancy clause, seeking protection from use of the commerce clause to compel arbitration, that effectuated servitude of a resident of a foreign state. R5-48-17 & 18. .

VIII. Plaintiff asserted defendant Larson tortuously interfered with her agreements with The Hospital. R5-48-17 & 18.

IX. Plaintiff asserted to the extent that Doctors Hospital was awarded damages, then The Practice and Larson were liable. R5-48-17 & 18.

X. Plaintiff asserted she was fraudulently led into signing the Recruiting Agreement by the practice and the first master treated her as an employee and therefore any agreement that treated her as an independent contractor under the second master of a joint venture was void and did not exist. *See Hodges v. Mayes*, 240 Ga. 643 (1978). R5-48-19.

XI. Plaintiff asserted there was no consideration for the amendment of July 2004 and therefore the amendment was non-existent. R5-48-19.

XII. Promissory estoppel.

XIII. Plaintiff sought damages for injury to her peace, happiness, and feelings for bad faith litigation.

The Order Compelling Arbitration R 6-86, 1a. The District Court acknowledged some of the Plaintiff's challenges to compelling arbitration, but did not address that many derived from parties

under the Employment Contract with no arbitration clause. R 6-86-4, 5a. In the court's discussion it cited 9 U.S.C. § 3 (R6-86-7 n. 9; 7a & 8a) but did not consider Petitioner's evidence as to theories challenging the loan's existence, that were court issues, such as failed consideration, formation and those arising from the Employment Contract and those parties, requiring court action or the summary trial § 4. R6-86-7, 7a. It did this even though at 4 it noted that the complaint asserted lack of consideration. R 6-86-4, 4a.

The Court did not consider the impact of the independent Employment Contract, nor discuss the distinction between money due under the independent Employment Contract versus loan principal that might have been forwarded by the Practice from the Hospital. See R 6-86-8 & 9, 8a & 9a. The court stated, "as a review of the amended complaint makes clear, all of plaintiff's claims concerning the enforceability of the arbitration clause, except for one [footnote 11] relates generally to the underlying recruitment agreement. Accordingly, I cannot consider Plaintiff' s arguments regarding the validity or enforceability of the contract. [footnote 12]." R 6-86-8 & 9, 8a & 9a.

In note 12 the Court misinterpreted plaintiff's assertion of violation of article 3 where the allegation is that the use of Article III power to compel arbitration, where the agreement has a loan forgiveness service provision, impacting a person and patients of a South Carolina practice, being told she has to practice in Georgia, or face a money judgment under Georgia arbitration law, challenges the implementation of the FAA on a dormancy clause and Thirteenth Amendment servitude basis. Plaintiff did not "raise a challenge to the

constitutionality of the FAA," as noted by the Court. R-6-86-9 n. 12, 9a & 10a.

The matter went up on appeal and was considered at this court as lacking jurisdiction because of lack of a final order. (R-91) (Eleventh Circuit No. 06-14552-G Oct. 4, 2006). This was error. *Arthur Anderson LLP v. Carlisle*, 1295 S.Ct. 1896 (2009)(Order denying stay of arbitration immediately appealable).

This part of the preceding may explain why the arbitrator acted as if the District Court had found that there was a unified contract, and that Plaintiff had appealed and that the Eleventh Circuit had ruled on the merits on that the servitude or peonage teenage argument. (R9-103-19 and 20). In arbitration Counsel for the Hospital argued that they had won on appeal and that this was an arbitrable dispute. (R8-19).

In par. 10 of the Award (R9-101 Ex. 4) the Arbitrator finds that paragraph 11, which is paragraph 10 of the executed Employment Contract, "states that all payments from the Hospital are to go to the Practice, which in turn paid Dr. Mishra's salary, benefits, insurance, etc.". 12a. There is no accounting for the impact of the right to independent pay.

The Arbitrator also used the Employment Contract to find that the general intent of Mishra was to be a guarantor for the former employer for the money received from the Hospital. R9-103-17 and 18; par. 39, 33a. This finding of general intent as to the Employment Contract is a matter which Mishra did not consent to be determined under the Arbitration Clause. The Arbitrator cannot interpret the Employment Contract and determine Mishra's

intent and therefore apply it to filling the gaps as to the RA.

The District Court confirmed the Arbitrator's Award addressing Stark law arguments at 6, partiality at 8, whether the arbitrator exceeding his authority at 9, manifest disregard for the law at 10, and refused to consider other of Plaintiff's reasons for reversal at 12. (R9-127, 43a).

The panel determined that, "Plaintiff did not substantiate her denial of the arbitration contract with evidence sufficient to made (sic) the denial colorable." *Mishra v. Doctors Hospital of Augusta*, No. 09-12548 (11th Cir. Dec. 3, 2009) at 2. ("Panel Order"). 60a. There was no discussion of the evidence of the obviously conflicting capacity documents. Order 2 and 3. The Court found Plaintiff did not show a breach of law` by the arbitrator.

District Court order compelling arbitration as between only Dr. Mishra and Doctors Hospital. *Mishra v. Doctor's Hospital of Augusta, LLC*, No. 1:05-CV-101 (S.D. Ga. July 18, 2006) (Order compelling arbitration) (R6-86) 1a.[2] This order was timely appealed August 17, 2006. (R7-89).

Sua sponte, the Eleventh Circuit dismissed, finding the District Court's July 18, 2006 Order (R6-86) (1a) "compelling arbitration, staying the case, and dismissing some, but not all, defendants, was not final and appealable. See 9 U.S.C. § 16(b)(cites omitted)." *Mishra v. Doctor's Hospital of Augusta, LLC*, No. 06-14552-G (11th Cir. October 4, 2006) (R7-91) (63a). Since then, this Court decided *Hall Street Associates, L.L.C. v. Mattel, Inc.* 552 U.S. 576,

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[2] Reference to pages in the separate Appendix will be "[page number]a."

128 S.Ct. 1396 (2008), which Petitioner asserts would have required the Eleventh Circuit to address the merits of the appeal of the District Court's Order compelling arbitration. This is significant because in the arbitration the arbitrator's Findings of Fact and Conclusions of Law follow the argument of counsel for Drs. Hospital and concludes that the District Court and the Eleventh Circuit had reached the conclusion that the dispute was arbitable.

The Arbitrator found that the case was arbitrable claiming that the prior appeal had been on the merits of arbitrability (R9-103-1 p. 7, 20) (19a-20a) and was res judicata on the issue of servitude. (R9-103-1 p. 19-20) 35a-36a. The Arbitrator found Plaintiff did not prevail on appeal regarding the peonage issue. (R9-103-1) 36a ¶ 48. Counsel for the Hospital argued "But we did wind up with an affirmed Eleventh Circuit--affirmance of the district court order that this is an arbitrable (sic) dispute." (R8-101-p. 19)

The record shows the appeal was dismissed for lack of jurisdiction because according to the panel, some, but not all, of the defendants were granted relief and the order was not a final order. *Mishra v. Doctors Hospital*, 11th Cir. No. 06-14552-G Oct. 4, 2006. (R7-91) 63a-65a.

The Eleventh Circuit denied a motion for reconsideration of the *sua sponte* dismissal sending the case to arbitration. *Mishra v. Doctor's Hospital of Augusta, LLC*, No. 06-14552-G (11th Cir. December 13, 2006) (R7-99) 81a.

CONSTITUTIONAL, STATUTORY, AND REGULATORY FRAMEWORK

While this is an arbitration case under the FAA, 9 U.S.C. §§ 1-16, and has existence, arbitrability, delegation clause, and other arbitration issues, more importantly, this is a specific performance[3] case of personal service physician, being required to move her practice to Georgia and the impact that it would have on patients. The premise for the demand for arbitration is the existence of a duty to repay. In this case servitude of a physician in a foreign state. Refusal of this servitude plus the state's arbitration law convert the refusal of servitude into a money judgment, to be domesticated, and sought to be enforced, subject to later jurisdiction challenges. It has questions about application of an act of Congress passed to protect the patient public to prevent "program and patient abuse." 42 U.S.C. § 1320a-7b (Anti-Kickback Act).

This is a jurisdictional dispute about mixed question of fact and law, that if left unresolved, undermine a demonstration of legitimate jurisdiction to compel arbitration. The suit is foremost an action for declaratory and injunctive relief filed by Petitioner to have the court determine in timely and meaningful manner whether she was a former

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[3] "Putting aside the constitutional and statutory peonage issues, this cases runs afoul of the long established, related principle that it is almost universal that a contract for personal services will not be specifically enforced. 5A Corbin, Contract § 1204, p. 398 (1964), D. Dobbs, Remedies, § 12.25, p. 929 (1973 Restatement (Second) Contracts § 3671; Annotation, "Specific Performance," 71 Am. Jur. 2d § (1973)." R6-65-6 & 7 n. 9.

employee, free to walk away from compelled servitude of a loan received and held by her former employee, or whether she owned the fees and practice and could seek injunctive relief for the loan proceeds and relief under law related to ownership interests in the pending litigation. Petitioner sought no benefits under the Recruiting Agreement loan, at one point, and was willing to exercise her right to seek employment elsewhere, walk away, and leave The Hospital and The Practice in their respective positions, with an existing practice and control of the loan principal, which The Practice still has.

Petitioner sought timely and meaningful resolution of the mixed question of fact and law, under the economic reality of the facts of actual performance, as to timely and meaningful resolution of whether she was an employee, or did she own the practice and the loan, or was she both,[4] so she could make tactical and economic moves to protect her interests.

Under the Stark Act if a physician or a practice group has a "financial relationship" with an "entity" it may not make a referral to the entity from which payment might be made through federal health care program. 42 U. S. C. § 1395nn(a)(1)(A).

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[4] In the facts were construed that she was an employee and did not own the fees, and that The Practice could disregard the Loan document and Stark regulations and not pass through to her, then that contract is unconscionable.

The unconcionability derives from the illusory ¶ 10 (139a) within the Employment Contract.

The claim for unconcionability goes to and derives from the Employment Contract -- with an arbitration clause.

Stark has reporting requirements, requiring that entities provide information concerning their ownership and investment interests at such times and manner that the Secretary shall specify 42 U. S. C. § 1395nn(f)(2) "[A]n ownership or investment interest" may be through equity, debt, or other means and includes an investment interest in an entity that holds . . . investment interest in any entity providing designated health service. 42 U. S. C. § 1395nn(f)(2)(B). The Anti-kickback act prohibits soliciting or receiving kickbacks, bribes, rebates, in cash or in kind, directly or indirectly to induce a referral where payment could be made under a federal health care program. 42 U.S.C. § 1320a-7b(b) (2) (A). Use of a physician as an employee when he should have an ownership interest is an in kind benefit as is the funding to an existing practice. The Hospital has provided a benefit in kind to help The Practice grow to grow market share. A physician will be considered to have relocated his or her medical practice if he has moved from more than 25 miles. In Dr. Mishra's case The Practice has been able to use a physician as an employee, and control the ownership interest the recruited physician would have had, and they have been able to pocket the difference between loan principal and salary, less allowable expenses.

The evidence showed that the Hospital could not show it "made" the loan or that the loan existed, because it could not show the loan principal was provided to the alleged borrower physician, or that the physician controlled the loan principal, as required by the loan agreement documents (Addenda July 2004, ¶ 3.1 Payments Remain with Physician; R.1-3; 191a) or by the law. 42 U.S.C. § 1001.952(nn)(e)(5)(C) (the physician recruitment

arrangement must "meet requirements as the Secretary may impose by regulation,") 42 C.F.R. 411.357(e)(4)(ii) ("Except for actual costs incurred by the physician or physician practice in recruiting the new physician, the remuneration is passed through to or remains with the recruited physician"); OIG Opinion letter No. 01-4 of May, 10, 2001 interpreting 42 U.S.C. § 1001.952(nn)(purpose of Stark loans is not "to lock up existing streams of referrals" from existing practices OIG Opinion letter No. 01-4 of May, 10, 2001 at page 7). The evidence shows an existing practice, growing through the employee – independent contractor financial arrangement.

Even before Mishra was recruiting through an ad run jointly by Drs. Hospital to "join the largest family medicine group in Augusta" (R3-32-5)(note the ad ambiguously states "join" and does not reference employment or ownership) and the purported lender under the Stark-proof Recruitment Agreement Loan and the joint venture of Drs. Hospital and The Practice, already had entered into nearly materially identical Employment Contracts and Recruiting Agreement Loans with nine physicians. R7-87 p. 11-35, 37-49 respectively.

These agreements start in 1998 (R7-87-1 p. 27) and the last one before Mishra was asked to sign the diametrically opposed purported agreements was in 2003. After Mishra executed her documents five more doctors have become employees under one document and independent contractos under the other, owning the practice. R7-87-1 p. 17-24, 31-32.

If the record, fairly construed, could show that there was some issue about whether all performance was not as an employee of The Practice or of the joint venture of The Practice and The Hospital under the Employment Contract, then a summary trial

under 9 U.S.C. § 4 should have been held to make the findings of fact, that become the findings of law, that establish on the record findings of standing in fact jurisdiction.

FACTUAL BACKGROUND

In two separate form documents,[5] Dr. Mishra was used by the Respondents in two diametrically opposed legal capacities. Dr. Mishra was an employee of The Practice in an Employment Contract – with no arbitration clause. The Employment Contract was formed performed and terminated. The other was a federally regulated Stark Act Safe Harbor Physician Recruitment Loan, with servitude forgiveness provisions -- with an arbitration clause, but without a delegation clause[6] –

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[5] There are two form Employment Contract documents created by The Practice. The first and only one performed is found at 132a of the Appendix.

Both the Employment Contract and the Recruiting Agreement Loan Documents are form contracts.

"[A]s a form document all ambiguity must be construed in favor of Mishra. *Hertz Equip. Rental. Corp. v. Evans*, 260 Ga. 532, 297 S.E.2d 692 (1990); *Belk & Co. v. Millender Sales Corp.*, 158 Ga. App. 522, 281 S.E.2d 287 (1981)." Brief for Appellant-Mishra at 18 filed July 6, 2009, *M.D. Seema L. Mishra v. Doctors Hospital of Augusta, LLC*, No. 09-12548 (S.D. Ga.).

[6] The challenged order compelling arbitration (1a) quotes the full text of HCA's form arbitration clause at 3 n.3, found in the Appendix herein at 3a:

> Any controversy or claim arising out of or related to this Agreement, or any breach thereof, shall be settled by arbitration in accordance with the rules and procedures of alternative dispute resolution and arbitration

> established by the Alternative Dispute Resolution Service of the American Health Lawyers Association ("AHLA"), and judgment upon any award rendered may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted before a single AHLA Arbitrator selected jointly by the parties, or in the event the parties are unable to agree, designated by AHLA.

The arbitration clause is found in Recruiting Agreement HCA-462 ¶ 13, 164a.

While HCA's form arbitration clause does have the following claims covered clause, "Any controversy arising out of or related to this agreement or any breach thereof, shall be settled by arbitration," like the claims covered clause in *Rent-A-Center, West, Inc. v. Jackson*, S. Ct. No. 09-497, slip op. at 4 decided June 21, 2010, "providing for arbitration of all "past, present, or future" disputes arising out of Jackson's employment with Rent-A-Center," HCA's arbitration clause does not have what could fairly be construed to be a delegation clause, especially where ambiguity must be construed against the maker HCA.

The delegation clause in *Rent-A-Center* provides that "[t]he Arbitrator...shall have exclusive authority to resolve any dispute relating to the...enforceability...of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable." *Id.* There is no similar language in the HCA-462 form arbitration clause.

An argument of waiver cannot apply because Petitioner has continued to challenge the use of an arbitration clause in a non-existent or void agreement. Waiver cannot apply because the Stark Safe Harbor Physician Recruitment Loan documents have a provision preventing application of waiver, unless the waiver is established in writing. 183a, ¶ 8; 194a, ¶ 7.3.

that Petitioner asserts was not made, did not exist, or as a matter of prudential gatekeeping cannot be the basis for an Article III court to use its jurisdiction in violation of public policy in derogation of fundamental and statutory rights, by giving implicit governmental authority to any enforcement of such performance, that could result in "program or patient abuse," under Stark or involuntary servitude. *See W.R. Grace & Co. v. Rubber Workers,* 461 U.S. 757, 103 S.Ct. 2177(1983).

The Hospital In October 2003, Mishra, a resident of South Carolina (R1-31; 12a ¶ 3) entered an Employment Contract – with no arbitration clause (132a-142a; 143a-158a) to be an employee physician in a new office in North Augusta, South Carolina, for an existing group practice, The Center for Primary Care ("The Practice") that also had several offices in the Augusta, Georgia, area. (R1-3 p. 10). She performed in the capacity of a salaried, physician, employee for the existing practice under an Employment Contract – with no arbitration clause. (132a-142a; 143a-158a).

Under severability and the non-performance of the exacting conditions of the Stark Safe Harbor Loan by either the lender of the borrower, in essence the real challenge is specifically to the arbitration clause and its effect.

Rent-A-Center is further distinguishable because the employment contract in *Rent-A-Center* was "made or existed," where the claim was one for discrimination during employment.

Respondent, The Center for Primary Care,[7] used Dr. Mishra as an employee as a salaried physician in a new office The Practice[8] was opening in North Augusta, South Carolina, with the help of Drs. Hospital[9] under a one year Employment Contract – with no arbitration clause.

As a written condition of her employment[10] and Respondent Larson, a manager of The Practice, as a fiduciary induced Dr. Mishra to sign The

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[7] Respondents are Doctors Hospital of Augusta, LLC ("Drs. Hospital" or "The Hospital") and HCA, Inc. and The Center for Primary Care ("The Practice") and Jim Larson.

[8] The Practice had several offices in the Augusta, Georgia area and was an "existing practice." One of the conditions to meet the Stark Safe Harbor was that Stark Safe Harbor Physician Recruitment Loans could not be used to "lock up existing streams of referrals from existing practices. OIG Opinion letter No. 01-4 of May, 10, 2001 interpreting 42 U.S.C. § 1001.9529(nn) (purpose of Stark loans is not "to lock up existing streams of referrals" from existing practices OIG Opinion letter No. 01-4 of May, 10, 2001 at page 7)

[9] Dr. Mishra Dec 1 ¶ 15-18. 122a.

[10] The Employment Contract states that "this contract is contingent upon all parties signing additional separate agreements described in Paragraph 11 of this contract among Doctors Hospital of Augusta, Inc., Center for Primary Care, P.C. and the Doctor..." 132a & 143a. In Employment Contract I (2/1/04-1/31/05) the phrase references ¶ 10, which is at 139a & 140a, and in the second contract, that did not occur because The Practice terminated Dr. Mishra Dec. 17, 2004, (127a) the phrase (143a) references ¶ 11, found at 151a & 152a.

Hospital's Stark Safe Harbor Physician Recruitment Loan Form documents.

There is no evidence like an accounting in the record.

In Petitioner's First Amended Complaint (R3-48) the Petitioner first sought protection from being compelled to arbitrate and a trial if there were any issues as to whether she was an employee or an independent contractor under various statutes and Constitutional provisions in ¶¶ 1-8. In ¶ 10, Mishra sought to protect herself "in the alternative, Dr. Mishra was an independent contractor who owned her own practice in South Carolina and that one or more Defendants tortiously (sic) interfered with that right." R3-48. The Complaint also alleged

> 17. The agreement relates to an employment agreement of Plaintiff who was hired pursuant to and (sic) Employment Agreement as an employee of Defendant Center for Primary Care (hereafter "CPC"), who then fraudulently caused Plaintiff to become a dual agent by making her enter into a sham Recruiting Agreement with Doctors Hospital, as an independent contractor and responsible for a loan that Doctors Hospital would give to the Center for Primary Care to open an office in North Augusta.
>
> 18. The Center for Primary Care used Plaintiff as an employee physician at their North Augusta, South Carolina office, and then defendant Larson and CPC caused her termination as if she were an at will employee, in breach of

the original Employment Agreement, before Plaintiff could complete the full service of her terms under the Recruiting Agreement with Doctors Hospital.

19. That as a result Doctors Hospital now threatens to enforce a mandatory arbitration clause in the Recruiting Agreement, that was not initialed by the parties at the time of signing, alleging that Plaintiff has breached that agreement because she has not moved her practice to Augusta, although they have not tendered the money to Plaintiff, to operate a practice in Augusta or North Augusta

20. On about June 10, 2005, Defendant Doctors Hospital send Plaintiff a letter demanding that she arbitrate a dispute, and informing her pursuant to Georgia's Arbitration Act that unless she filed a challenged thereto within thirty days then should would waive her right to challenge mandatory arbitration.

21. This action is to prevent mandatory arbitration and ultimately to prevent enforcement of the Recruiting Agreement, as interpreted by Defendant Doctors Hospital, and/or for damages, and/or to hold Defendants Larson and the Center for Primary Care responsible for any monies the court might find Plaintiff owes Doctors Hospital.

R5-48 ¶¶17-21.

If the facts were construed such that she was an employee and did not own the fees, and that The Practice could disregard the Loan document and Stark regulations and not pass the principal through to her, then that contract is unconscionable. That unconcionability derives from the illusory ¶ 10 within the Employment Contract if a former employee has to repay a loan kept by the employer. The claim for unconcionability goes to and derives from the Employment Contract – with an arbitration clause.

It is not possible for Respondents to use ¶ 10 as of the Employment Contract (139a-140a) a panacea in the Employment Contract, even if there were no merger clause. The paragraph and related performance would still have to meet Stark. The clause is ambiguous and illusory, when it says "pursuant" to the agreements the "monies are to "supplement salary." The Recruiting Agreement is supposed to be a loan to Petitioner. Salary is an independent right under the rest of the Employment Contract, and there is no discussion in ¶ 10 about ownership of the practice/fees, or relocation capacity.

Under the RA loan and the ad to recruit a physician, run by Drs. Hospital and The Practice, which also shows the joint venture, states, "Join the largest family medicine group in Augusta...14 physicians..." Notice that the language is vague about being an employee or an independent contractor. R3-32-Tab1; New physicians to work in North Augusta.

REASONS TO GRANT PETITION

I. In this action for declaratory relief for a meaningful declaration of rights in the face of litigation, to determine whether Plaintiff was an employee under an employment contract with no arbitration clause, that evidence showed she performed, or whether she was an independent contract physician, who owned her own practice and was borrower, under a Stark safe haven physician recruitment loan, with an arbitration clause, but with no delegation clause, was it error to compel arbitration without first making gateway determinations under 9 U.S.C. § 4 and as part of the declaratory relief sought, and where there were independent reasons to find the underlying agreement did not exist arising out of and attaching to parties associated with the employment contract and a joint venture?

A. Petitioner sought declaratory relief of mixed questions of fact and law, was she an employee or independent contractor so she could protect her interests. Declaratory relief may not be arbitrarily derived on whim. *Hollis v. Otawamaba County Loans*, 657 F.2d 746, 750 (5th Cir. 1981).

B. To emphasize that resolution of mixed questions of fact in law under 9 U.S.C. § 4, and summary trial is an integral part of the FAA, and everyone's interest.

C. To correct the reach of *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 406 (1967)) and *Moses H. Cone Memorial Hosp. v.*

Mercury Const. Corp., 460 U.S. 1, 20 n. 23 (1983) so that their combined principles of discretion to control the docket if there are any challenges to compelled arbitration that "relate to the underlying agreement, allows the court to blithely treat its duty to address whether the underlying agreement was "made," or existed, as required by 9 U.S.C. § 4. Where one or more defenses to arbitration, or set of facts, raises "makings" or existence issues, that can fairly be said to have arisen out of occurrences, pre-existing relationships or agreements separate from the underlying agreement with the arbitration clause sought to be compelled, § 4 duties are essential.

D. To address whether a lack of capacity to enter a particular type of financial arrangement where the capacity is established by federal regulation under an act of Congress demonstrates a lack of signatory capacity, beyond the traditional, but limited use of the principle that lack of legal signatory capacity relates to age or mental infirmity.

E. To Show that broad scope of claim clauses cannot be argued to be delegation clauses, to attempt to close that floodgate.

F. Give meaning to efficient justice through meaningful and timely application of declaratory and injunctive relief under 28 U.S.C. § 2201, when there are factual challenges to jurisdiction that establish mixed questions of fact and law, and thereafter the legal duties and rights of the parties.

Petitioner filed this action for declaratory and injunctive relief and no order has addressed

directly why the District Court refused to make a finding as to whether Petitioner was an employee of The Practice or the joint venture of The Practice and The Hospital or whether she was an independent contractor who owned the fees and patient files in the practice she had "joined."

II. Was it error not to use Article III prudential jurisdiction to prevent arbitration as to the Stark Act interests or compulsory servitude until to hold arbitration was consistent with public policy and law?

A. Given greater government involvement in health care to hold a place in line for use of cares like *W.R. Grace & Co. v. Rubber Workers,* 461 U.S. 757, 103 S.Ct. 2177(1983) to protect patients and their relationships, when arbitration clause threaten fundamental rights.

B. Reintroduce dormancy clause as one of gate keeper duties of Article III Court's plenary jurisdiction to determine jurisdiction, and determine whether compelling arbitration is something that an Article III court can do and maintain its independence.

III. Was it error to find that the arbitrator did not exceed his authority, where he used language from the separate employment contract to account for the fact that material Stark safe harbor loan conditions were not met, where that was not permitted under the document with the arbitration clause?

A. Petitioner demonstrates the error of using reverse logic of parties behavior to define "intent of parties" rather than comparing the plain language of the agreement to the actual performance. This arbitrator used ¶ 10 from the Employment Contract, without proper construction of ambiguous terms in a form document, to justify a deviation from a federal regulation requiring that the loan principal be passed through to the physician.

This arbitrator has a former employee responsible to pay a loan his former employer kept.

The writ should be granted to review and correct the hard result to show the system has integrity.

B. To warn arbitrators to do their homework on arbitrability, *res judicata*, and other matters.

IV. Was it error to grant judgment to the Hospital without first giving Plaintiff her day in court as to the claims existing outside the reach of arbitration, if any were covered by arbitration?

A. To show that even if arbitration is compelled in a case with multiple parties, some of whom are not subject to arbitration, and an award is made, it may be judicious to resist entering judgment until other trials are held.

The preferences shown the Recruiting Agreement violate *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 109 S.Ct. 1248 (1989).

CONCLUSION

Reverse the judgment and award to the Hospital.

Find that arbitration should not have been compelled until mixed questions of fact and law were addressed under gateway functions to prevent the need to reach more prudential based findings to protect fundamental rights and public policy, where simple equitable and contract principles can answer the questions.

Order a summary trial under 9 U.S.C. § 4.

Supreme Court, U.S.
FILED

10-23 JUN 28 2010

OFFICE OF THE CLERK

No. ____

In The
Supreme Court of the United States

SEEMA L. MISHRA, M.D., et al.,

Petitioners,

v.

DOCTOR'S HOSPITAL OF AUGUSTA, LLC, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX

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Opinions and Orders to Be Reviewed

[DOC 86 or R6-86]
IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

SEEMA L. MISHRA, M.D., on her own behalf, individually, and on behalf of her patients, both private pay and those receiving Medicaid or Medicare from the federal government or financial assistance for healthcare from the State of South Carolina,	*	
Plaintiff,	*	
v.	*	CV 105-101
HCA INC., privately and under color of law; DOCTORS HOSPITALOF AUGUSTA, LLC d/b/a DOCOTRS HOSPITAL OF AUGUSTA, and its parent privately and under color of law; JOHN DOE, OR ANY AGENT OF HCA INC., individually and under color of law; THE CENTER FOR PRIMARYCARE; and JIM LARSON,	*	
Defendants.	*	

FILED
U.S. DISTRICT COURT
AUGUSTA DIV
2006 JUL 18 AM 10:17
CLERK: /s/C. Adams

ORDER

Plaintiff Seema Mishra filed the captioned case seeking to prevent Defendants HCA, Inc., Healthtrust, Inc., Galen

DHB (39) CCC: **[end 1 of 10]**

Holdco, LLC, and Doctors Hospital of Augusta, L.L.C. ("HCA defendants") from compelling the arbitration of a contract dispute.[1] (Am. Compl. ¶ 1.) Presently before the Court are the HCA defendants' motions to dismiss or, in the alternative, to stay proceedings and compel arbitration.[2] (Doc. Nos. 57 & 77.) For the following

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[1] Plaintiff also seeks to hold Defendants Jim Larson and the Center for Primary Care ("CPC defendants") liable for any damages relating to Plaintiff's contract dispute with the HCA defendants. (Am. Compl. ¶ 21.)

[2] Because they are directed towards a superceded (sic) pleading, the HCA defendants' motions to dismiss (doc. nos. 9 & 45) which were filed before Plaintiff filed her amended complaint are **DENIED AS MOOT.** See Cedillo v. Standard Oil Co., 261 F.2d 443 (5th Cir. 1958).

Also pending before the Court is Plaintiff's motion to stay the adjudication of the HCA defendants' motions to

reasons, the HCA defendants' motions are **GRANTED IN PART** and **DENIED IN PART.**

I. Background

Plaintiff is a physician who is licensed in Georgia and South Carolina. (Am. Compl. ¶ 9.) On October 14, 2003, Plaintiff entered into an employment contract with Defendant Center for Primary Care. (Id. ¶ 25.) On November 16, 2003, Plaintiff signed Defendant Doctors Hospital's "Recruiting Agreement" and other related agreements. (Id. ¶¶ 26-27.) **[end 2 of 10]**

Among .its many provisions, the Recruiting Agreement has a clause which mandates the arbitration of "any controversy or claim arising out of or related to [the Recruiting Agreement], or any breach thereof."[3] (Id. ¶ 31; Decl. of Seema Mishra,

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dismiss pending the United States Supreme Court's decision in Buckeye Check Cashing, Inc. v. Cardegna, 126 S.Ct. 1204 (2006). As the Supreme Court has now decided the Buckeye Check case and the parties have briefed the case, Plaintiff's motion (doc. no. 54) is **DENIED AS MOOT.**

[3] The full text of the arbitration clause states that:

> Any controversy or claim arising out of or related to this Agreement, or any breach thereof, shall be settled by arbitration in accordance with the rules and procedures of alternative dispute resolution and arbitration established by the Alternative Dispute Resolution Service of the American 'Health Lawyers Association ("AHLA"), and judgment upon any award rendered may be entered in any court having jurisdiction thereof. Such

Ex. 2 ¶ 13.)[4]

In December 2004, Defendant Jim Larson terminated Plaintiff's employment at Defendant Center for Primary Care because she had failed to keep medical records current. (Am. Compl. ¶¶ 46-47.) Not long after her termination, Defendant Doctors Hospital notified Plaintiff that she was in breach of the Recruiting Agreement because she had (1) ceased practicing medicine in the geographic area served by Defendant Doctors [**end 3 of 10]** Hospital, (2) failed to maintain privileges at Defendant Doctors Hospital, and (3) not been available for emergency room coverage at Defendant Doctors Hospital. (Id. ¶¶ 49, 55, & 64.) In response to Defendant Doctors Hospital's demand for arbitration, Plaintiff filed this lawsuit wherein she argues that the Recruiting Agreement should not be enforced because it is unconscionable, lacks consideration, was not initialed,. by the parties next to the arbitration clause as Georgia law requires for employment contracts, and violates the United States Constitution's Commerce Clause as well as the

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> arbitration shall be conducted before a single AHLA Arbitrator selected jointly by the parties, or in the event the parties are unable to agree, designated by AHLA.

[4] The Recruiting Agreement is attached to Plaintiff's declaration which was filed with the original complaint. While this document is not attached to the Amended Complaint, I consider it to be part of the pleadings because it is referenced extensively in the Amended Complaint and is central to Plaintiff's claims. See Brooks v. Blue Cross and Blue Shield of Florida, Inc., 116 F.3d 1364, 1369 (11th Cir. 1997) .

First, Fifth, Seventh, Thirteenth, and Fourteenth Amendments.

Defendants HCA, Inc., Healthtrust,. Inc., and Galen Holdco, LLC, have moved for the dismissal of Plaintiff's claims based on the lack of privity of contract between them and Plaintiff. Alternatively, the HCA Defendants move to stay proceedings and compel arbitration pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 et sect. The parties have fully briefed the issues, and these motions are now ripe for consideration.

II. Analysis

A. Motions to Dismiss

Plaintiff's claims against the HCA defendants arise out of the Recruiting Agreement which was signed only by Plaintiff **[end 4 of 10]** and Defendant Doctors Hospital's chief executive officer. Defendants HCA, Inc., Healthtrust, Inc., and Galen Holdco, LLC argue that they are not in privity of contract with Plaintiff because they are neither mentioned in the Recruiting Agreement, nor did they sign it.[5] Plaintiff alleges, however, that Defendant HCA, Inc. owns Defendant Doctor's Hospital and controls its handling of the Recruiting Agreement. (Am. Compl. ¶¶ 13 &.115.)

Because I must accept the allegations contained in the Amended Complaint as true and draw all reasonable inferences in Plaintiff's favor,[6]

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[5] While the Recruiting Agreement does not mention Defendant HCA, Inc. in its text; I note that each page of the contract is emblazoned with the logo of Defendant HCA, Inc.'s legal department.

[6] See Brooks, 116 F.3d at 1369 ("[F]or the purposes of the motion to dismiss the complaint must be construed in a light

the alleged relationship between Defendants Doctors Hospital and HCA, Inc. supplies the required privity for Plaintiff's claims to survive a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b) (6).[7] **[end 5 of 10]** Accordingly, Defendant HCA, Inc.'s motion to dismiss (doc. no. 57) is **DENIED.** In contrast, Plaintiff does not make any allegation in the Amended Complaint that would link Defendants Healthtrust, Inc and Galen Holdco, LLC to Defendant Doctors Hospital or the Recruiting Agreement. (Am. Compl. ¶ 14.) Therefore; Defendants Healthtrust, Inc. and Galen Holdco, LLCs motion to dismiss (doc. no. 77) is **GRANTED.**

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most favorable to the plaintiff and the factual allegations taken as true.")

[7] See Novatel Communications, Inc. v. Cellular Telephone Supply, Inc., CV 85-2674, 1986 WL 798475, *12 (N.D.Ga 1986) ("[A]s a general rule, one not in privity of contract with another cannot maintain an action against him for breach of the contract. . . . [However,] Georgia law clearly allows a parent of a wholly owned subsidiary to be held liable for the subsidiary's breach of contract 'when the subsidiary is in fact' the agent, instrumentality, and alter ego of the parent.") (quotations omitted); see also Carruthers v. Flaum, 365 F.Supp.2d 448, 472 (S.D.N.Y. 2005)(denying motion for judgment on pleadings in breach of contract case, even though no contract existed between plaintiff and defendant, because complaint alleged an agency relationship between defendants).

B. Motions to Stay Litigation and Compel Arbitration

Turning to Defendants HCA, Inc. and Doctors Hospital's motion to stay litigation and compel arbitration, the first question that must be answered is whether the Federal Arbitration Act ("FAA") applies to this contract dispute. The FAA applies to written arbitration provisions in contracts "evidencing a transaction involving commerce." 9 U.S.C. § 2. The Supreme Court, has "interpreted the term involving commerce' in the FAA as the functional equivalent of the more familiar term 'affecting commerce' — words of art that ordinarily signal the broadest permissible exercise of Congress' Commerce Clause power." Citizens Bank v. Alafabco, Inc., 539 U.S. 52, 56 (2003). In this case, it is clear that **[end 6 of 10]** the FAA applies because Plaintiff practice's medicine in South Carolina and Defendant Doctors Hospital is located in Georgia.

Because the FAA applies to this case and Defendants HCA, Inc. and Doctors. Hospital have applied for a stay,[8] I must now determine whether Plaintiff's claims are arbitrable under the Recruitment Agreement. See 9 U.S.C. R 3.[9] The

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[8] Because of Plaintiff's allegations regarding the relationship between Defendants HCA, Inc. and Doctors Hospital, Defendant HCA, Inc. may seek to compel arbitration even though it is not a signatory to the Recruiting Agreement. See MS Dealer Service Corp. v. Franklin, 177 F.3d 942, 947 (11th Cir. 1999).

[9] 9 U.S.C. § 3 states that "[i]f any suit or proceeding be brought in any of the courts of the United States upon any

FAA provides that arbitration agreements, like the one in this case "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The Supreme Court has interpreted this language so that "generally applicable Contract defenses, such as fraud, duress, or unconscionability, maybe applied to invalidate arbitration agreements without contravening 9 U.S.C.] § 2." Doctor's Associates, Inc.-v. Casarotto, 517 U.S. 681, 687 (1996). **[end 7 of 10]**

While the FAA permits parties to raise such defenses to the enforcement of an arbitration agreement, these challenges are "a matter to be resolved by the arbitrator, not the federal court" if they "relate[] to the underlying contract generally, and not to the arbitration clause specifically." Jenkins v. First American Cash Advance of Georgia, LLC, 400 F.3d 868, 877 (11th Cir. 2005) (citing Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 406 (1967)).[10] As a review of the

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issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, Upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement."

[10] While this motion was pending, the Supreme Court issued its opinion in Buckeye Check Cashing, Inc, v. Cardegna, 126 S.Ct. 1204 (2006). See note 2 supra. Nothing in Buckeye Check affects this case because Plaintiff has not raised a colorable challenge to her signatory power. See Chastain v. Robinson-Humphrey Co., 957 F.2d 851, 255 fifth Cir. 1992); see also Fox

Amended Complaint makes clear, all of Plaintiff's claims concerning the enforceability of the arbitration clause, except for one,[11] relate generally to the **[end 8 of 10]** underlying Recruitment Agreement. Accordingly, I cannot consider Plaintiff's arguments regarding the validity or enforceability of the contract.[12] As Plaintiff has not

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Intern. Relations v. Fisery Securities, Inc., 418 F.Supp.2d 718, 722-24 (E.D.Pa. 2006).

[11] Plaintiff's sole argument which attacks the validity of the arbitration clause specifically is that the parties did not initial next to the clause as required by O.C.G.A § 2(c)(9). This statute, however, does not apply to the Recruitment Agreement because § 9-9-2(c) (9) only applies to employment contracts. The Recruiting Agreement is not an employment contract according to the explicit language in its fifth paragraph. Even if the Recruiting Agreement were an employment contract, the initialing requirement in § 9-92(c)(9) would be preempted by the FAA because it is imposed only on arbitration agreements. See Jenkins, 400 F.3d at 875 ("[T]he FAA allows state law to invalidate an arbitration agreement provided the law at issue governs contracts generally and not arbitration agreements specifically"); see also Primerica Financial Services, Inc. v. Wise, 217 Ga. App. 36, 40-41 (1995).

[12] To the extent that Plaintiff's Amended Complaint raises a challenge to the constitutionality of the FAA, I reject such arguments because it is well settled that the FAA is constitutional. See Prima Paint, 388 U.S. at 405 ("[I]t is clear beyond dispute that the federal arbitration statute is based upon and confined to the incontestable federal foundations of control over interstate commerce and over admiralty.") Furthermore, I note that an arbitrator's monetary award would not violate the Constitution because neither the parties

raised a valid defense specifically addressed to the arbitration Clause in the Recruitment agreement, I must stay further proceedings in this case and refer the matter to arbitration Pursuant to 9 U.S.C. § 3.

III. Conclusion

Upon the foregoing, Defendants HCA, Inc. and Doctors Hospital's motion to stay proceedings and compel arbitration (doc. no. 57) is **GRANTED.** Accordingly, **IT IS ORDERED** that all further proceedings herein are **STAYED** pending arbitration.[13] **[end 9 of 10]** The Clerk is instructed to **CLOSE** this case for all purposes of statistical reporting unless and until the parties move to re-open it.

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nor the arbitrator are state actors. See Abner v. Mobile Infirmary Hospital, 149 Fed. Appx. 857, 859 (11th Cir. 2005)("[T]he Constitution only protects against injuries caused by state actors.")

[13] Because Plaintiff seeks to hold Defendants Jim Larson and the Center for Primary Care liable for any damages relating to Plaintiff's contract dispute with the HCA defendants, I find that the interests of justice would best be served by staying the litigation of claims relating to .the CPC defendants until Plaintiff's contract dispute with the HCA defendants has been arbitrated. See Moses H. Cone Memorial Hosp. v. Mercury Const. Corp., 460 U.S. 1, 20 n. 23 (1983) ("In some cases, of course, it may be advisable to stay litigation among the non-arbitrating parties pending the outcome. of the .arbitration. That decision is one left to the district court . . . as a matter of its discretion to control its docket.").

ORDER ENTERED at Augusta, Georgia, this 18th day of July, 2006.

/s/ Dudley H. Bowen, Jr.
U.S. DISTRICT JUDGE

[end 10 of 10]

[DOC 103-1 (Exhibit A) or R8-103-1]
AMERICAN HEALTH LAWYERS ASSOCIATION

DOCTORS HOSITAL OF AUGUSTA, LLC d/b/a DOCOTORS HOSPITAL OF AUGUSTA	)	
Claimant,	)	Case No. A-042407-522
v.	)	
SEEMA L. MISHRA, MD,	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

Doctors Hospital of Augusta, LLC d/b/a Doctors Hospital of Augusta ("Claimant" or "Hospital) initiated this Arbitration proceeding pursuant to an arbitration agreement entered into with Seema L. Mishra, M.D. ("Respondent", "Mishra" or "Dr. Mishra). A hearing was held in according with the arbitration Rules of the American Health Lawyers Association in Augusta, Georgia on December 7, 2007. A transcript was prepared, and the parties submitted post-hearing Briefs and proposed Findings and Conclusions.

Dr. Mishra executed a contract providing for a loan to her to guarantee a certain minimum income in her first year of medical practice in the Augusta,

Georgia community. The Hospital contends that she received the loan payments, she did not fulfill conditions for forgiveness of the loan when she prematurely left the community and also failed to take emergency room call at the Hospital, and she has not repaid the loan. The Hospital further contends that these facts constitute a

EXHIBIT
A

[end 1 of 24]
prima facie case of liability and damages.

Dr. Mishra contends (i) that her employer (CPC) and the Hospital were involved in a joint venture, and that her employer forced her to sign the loan agreement so it is a contract of adhesion, (ii) that she was already in the community at the time she signed the contract so the contract violated federal laws concerning a physician being recruited to a new community, (iii) that the Hospital paid her employer rather than Dr. Mishra personally so there was a failure of consideration or of a condition precedent, (iv) that the contract imposed involuntary servitude or peonage on Dr. Mishra, (v) that the dispute should not be subject to arbitration; or that portions of the dispute, such as the attorney's fee claim, should not be subject to arbitration, (vi) that enforcing the contract would not be fair for various reasons, and (vii) that the Hospital could not sue Dr. Mishra for leaving the Augusta, Georgia community because she never worked in Augusta, Georgia, but rather worked in North Augusta, which is in South Carolina. Accordingly, it is contended that the Hospital had waived that requirement at the outset.

FINDINGS OF FACT

1. The following facts are derived from testimony at the arbitration hearing as well as documents contained in the exhibit notebooks provided to the arbitrator which the parties stipulated were admissible, except where otherwise objected to during the arbitration. Citations to the exhibit notebooks are in the format "Exhibits p. ____", and zeros have been dropped from the bates numbers for simplicity in referencing the page numbers.

[end 2 of 24]

2. Dr. Mishra was recruited to the Augusta, Georgia community by the Center for Primary Care ("CPC" or the "Practice") and by Doctors Hospital of Augusta (the "Hospital"). (Exhibits pp. 3. 12, 234).

3. Dr. Mishra was an employee of the Practice and not the Hospital. (Transcript pp. 41-42; 248; Exhibit p. 3 at Paragraph 5). Dr. Mishra executed an employment agreement with CPC. (Transcript p. 268; Exhibit pp. 31-36).

4. The employment agreement was expressly conditioned on Dr. Mishra signing certain contracts with the Hospital. (Exhibit p. 35 at Paragraph 10; Transcript p. 266-267).

5. Dr. Mishra executed a Recruiting Agreement and several addenda with the Hospital (collectively, the "Loan Agreement"). (Exhibits pp. 3-13, 28-30).

6. The Loan Agreement provides that the Hospital would loan money, subject to conditions, to help Dr. Mishra move to and establish a medical practice in the community. (Transcript pp. 46-48; Exhibit p. 8). Pursuant to the Agreement, the Hospital would loan an amount up to $240,000. (Exhibit p. 6). The actual amount loaned was the difference between gross revenues generated by Dr. Mishra in her medical practice and $20,000 per month. (Exhibit p. 6; Transcript pp. 43-44).

7. The Hospital's obligations under the Agreement were subject to several conditions. (Exhibit p. 3 at Paragraphs 2-4, 6). The preconditions would be breached if Dr. Mishra left the community before 48 months after her start date (Transcript pp. 40-41), if she failed to maintain medical staff membership and privileges (Transcript p. 40), if she **[end 3 of 24]** failed to take emergency room call (Transcript p. 40-41), or if she failed to maintain malpractice insurance (Transcript p. 42).

8. There were several addenda to the Recruiting Agreement which, taken together, make up the Loan Agreement. (Exhibit pp. 1 & 5). Dr. Mishra executed a "Recruiting Agreement." (Exhibits pp. 3-7). It provided that the Hospital's loan payments for Dr. Mishra's benefit would be made for 12 months. *(Id.)*. Then, 1/36th of the payments would be forgiven each month for the next 36 months

that Dr. Mishra performed all conditions of the contract. *(Id).* Thus, if Dr. Mishra performed all conditions for 48 months she owed nothing to the Hospital. *(Id.).*

9. Dr. Mishra and the CPC also executed an "Agreement as to Medical Practice's Role in Recruitment" concerning CPC's interaction with the hospital and Dr. Mishra. (Exhibit p. 12).

10. An Employment Agreement between CPC and Dr. Mishra states that all payments from the Hospital are to go to the Practice, which in turn paid Dr. Mishra's salary, benefits, insurance, etc. (Exhibit p. 20 at Paragraph 11).

11. Dr. Mishra also signed an Addendum - Marketing Expenses. (Transcript pp_ 48-50). It provided that the Hospital would pay up to $5,000 of marketing expenses for Dr. Mishra. *(Id.).* If also provided that if Dr. Mishra left before her commitment to work in the community was fulfilled, she was required to repay a pro-rated amount. *(Id.).*

12. Finally, Dr. Mishra also signed an Addendum - Sign on Bonus. (Transcript pp. 50-51). It provided she would receive a $20,000 sign on bonus. *(Id).* Again, however, pursuant **[end 4 of 24]** to the Employment Agreement all payments went to the Practice. The addendum also provided that if Dr. Mishra left the community before her commitment period was up, she was required to repay a

pro-rated portion of the bonus. *(Id.)*.

13. Pursuant to the various document comprising the Loan Agreement, the Hospital made payments to Dr. Mishra or her employer for use in paying Dr. Mishra's salary, benefits, and other items of compensation. (Transcript pp. 56-61). Those payments included money loaned as part of the income guaranty, the sign on bonus, and the marketing expense reimbursement. *(Id)*.

14. Dr. Mishra ceased practicing medicine full-time at CPC on or around December 17, 2004, when CPC terminated Dr. Mishra's employment. (Exhibits p. 82, 93-94).

15. Dr. Mishra did not work in the Augusta, Georgia community for 48 months after executing the Recruiting Agreement and related documents. (Transcript p. 50). Dr. Mishra worked in the community for 11 months. *(Id)*. This was a violation of the terms of the Loan Agreement. (Exhibit pp. 3 at Paragraphs 2-3, 8).

16. After she was terminated, Dr. Mishra also failed to perform other duties under the Loan Agreement such as maintaining staff privileges at the Hospital, taking emergency room call at the Hospital, and keeping malpractice insurance in place. (Transcript. pp. 63; 123; 272).

17. When CPC terminated Dr. Mishra, the Hospital made efforts to keep Dr. Mishra in

the community. (Transcript pp. 62-63). This included contacting doctors to see if they would hire Dr. Mishra. *(Id.)*. One doctor — Dr. Robert Rhodes—expressed interest in **[end 5 of 24]** hiring Dr. Mishra. *(Id.)*. The Hospital passed that information on to Dr. Mishra and she indicated that she was not interested. *(Id.)*.

18. On February 9, 2005, counsel for the Hospital wrote a letter to Dr. Mishra notifying her that she was in breach of the Loan Agreement. (Exhibits pp. 90-92; Transcript pp. 167- 168).

19. On April 1, 2005, counsel for the Hospital wrote a second letter to Dr. Mishra informing her that she had further breached the Loan Agreement when she failed to maintain Hospital medical staff membership and privileges in good standing, and was not available for emergency room coverage for patients at the Hospital's emergency room. (Exhibits pp. 101-103).

20. On June 10, 2005, pursuant to the Loan Agreement, counsel for the Hospital sent Dr. Mishra a letter demanding arbitration in accordance with the rules and procedures of alternative dispute resolution and arbitration established by the Alternative Dispute Resolution Service of the American Health Lawyers Association ("AHLA"). (Exhibits pp. 107-109).

21. On July 8, 2005, Dr. Mishra filed a Complaint for Declaratory and Injunctive Relief to Stay

Mandatory Injunction of Employment Contract and Declaration of Seema L. Mishra, M.D. in the U.S. District Court, Southern District of Georgia, Augusta Division, under case number CV105-101. (Exhibits pp. 10-158).

[end 6 of 24]

22. On July 18, 2006, the U.S. District Court entered an Order referring the case to arbitration. (Transcript pp. 173-177; U.S. District Court, Southern District of Georgia CM/ECF Docket Entry No. 86).

23. Dr. Mishra appealed the U.S. District Court's Order referring the case to arbitration. (Transcript pp. 173-177; U.S. District Court, Southern District of Georgia CM/ECF Docket Entry No. 89). The Eleventh Circuit Court of Appeals denied Dr. Mishra's appeal on October 4, 2006. (Transcript pp. 173-177).

24. Dr. Mishra then filed a Motion for Reconsideration with the Eleventh Circuit Court of Appeal. (Transcript pp. 173-177).

25. Dr. Mishra also filed a motion to amend the U.S. District Court's July 18, 2006 Order. (Transcript pp. 173-177; U.S. District Court, Southern District of Georgia CM/ECF Docket Entry No. 93). The U.S. District Court denied this motion. (Transcript pp. 173- 177: U.S. District Court. Southern District of Georgia CM/ECF Docket Entry No. 98).

26. The Eleventh Circuit Court of Appeals denied Dr. Mishra's Motion for Reconsideration on

December 13, 2006. (Transcript pp. 173-177).

27. On April 9, 2007, counsel for the Hospital sent a renewed demand for arbitration to Dr. Mishra's counsel. (Transcript pp. 173-177).

28. On April 23, 2007, the Hospital filed a Request for Dispute Resolvers List with the AHLA.

29. The Hospital was forced to pay the entire filing fee to initiate the arbitration. Dr. Mishra was unwilling or unable to pay her one-half and the Hospital paid the entire arbitration **[end 7 of 24]** retainer of $10,000.00 on July 10, 2007. (Transcript pp. 173-177). Dr. Mishra contended at the arbitration that she did not have funds to pay her one-half of the fee (Transcript pp. 261-262). Regardless of financial circumstances, the end result is that the Hospital paid a retainer to the Arbitrator representing both parties' share of the arbitration retainer fee.

30. Dr. Mishra filed a Motion for Summary Judgment on August 10, 2007. The Hospital filed a response on August 30, 2007. (Transcript pp. 173-177). On September 21, 2007, the Arbitrator denied Dr. Mishra's Motion for Summary Judgment.

31. The Arbitration hearing was held on December 5, 2007.

32. Through testimony at the arbitration

hearing, the Hospital established that the principal amount owing under the Loan Agreement is $88,691.81. (Transcript p. 166-169 and Plaintiffs arbitration Ex. 1, summarizing damages; Transcript pp. 56-61, checks from Hospital).

33. Pre-Judgment Interest under the Loan Agreement totals $16,283.68, calculated at 6.25% from January 1, 2005 to the date of the arbitration hearing (1,072 days at $15.19 per diem). (Transcript pp. 169-172).

34. The amount owed under the Marketing Expense Reimbursement Addendum is $3,857.17.

35. The amount owed under the Sign-On Bonus Addendum is $15,416.67. *(Id.).* **[end 8 of 24]**

36. The amount of pre-award interest owing under the Marketing Expense Reimbursement Addendum and Sign-On Bonus Addendum is $3,966.40, calculated at 7.00% from January 1, 2005 to present = 1,072 days at $3.70 per diem. *(Id.).*

37. The Loan Agreement provides that the Arbitrator may award attorney's fees to the holder of the promissory note. (Exhibits p. 9).

38. The Hospital claimed attorney's fees and expenses up to the arbitration hearing of $110,549.83. *(Id.).*

39. The Arbitrator's retainer paid by the

Hospital was $10,000.00. *(Id).*

40. Defendant's portion of the Double Tree Hotel Conference Room Fee where the arbitration was held is $214.00. *(Id.).*

CONCLUSIONS OF LAW

1. This is an action to recover payments made pursuant to the Loan Agreement. The parties use the word "loan" to describe the nature of the payments from the Hospital to Dr. Mishra. *(See* Exhibits p. 3 at Paragraph 1; Transcript pp. 43-44) ("Hospital hereby agrees to ***loan*** Physician certain amounts of money....") (emphasis supplied). The Loan Agreement is comprised of several integrated pages, and includes a Promissory Note. (Exhibit pp. 8-9; Transcript pp. 43-44; 47) ("The undersigned, Seem L. Mishra, M.D., physician or maker herby promises to pay according to the terms of this note....").

2. The parties' Loan Agreement expressly states that if Dr. Mishra breaches any term of the Loan Agreement, she is obligated to repay the unforgiven portion of the loan. *(See* Exhibits pp 3, 8-9; **[end 9 of 24]** Transcript pp. 39-40).

3. The Loan Agreement defines breaches of Dr. Mishra's duties to include if Dr. Mishra left the community before 48 months after her start date (Transcript pp. 40-41), if she failed to maintain medical staff membership and privileges (Transcript p. 40), if she failed to

take emergency room call (Transcript p. 40-41), or if she failed to maintain malpractice insurance (Transcript p. 42).

4. In an action to recover on a promissory note, "when signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense." *Braswell v. Bank of Early*, 299 Ga. App. 445, 447, 494 S.E.2d 277 (1997) (cits. omitted).

5. Here, Dr. Mishra admits signing the Loan Agreement, Transcript pp. 214, 246-247, creating a *prima facie* right for the Hospital to recover the amounts loaned.

6. Once a *prima facie* right to judgment has been established, the burden shifts to the defendant to establish an affirmative defense. *Jay Gleason Advertising Service, Inc. v. Gleason*, 193 Ga. App. 445, 388 S.E.2d 43 (1989).

7. Having established a *prima facie* case of Dr. Mishra's liability to the Hospital, the burden is on Dr. Mishra to prove a valid defense. The Hospital does not have an obligation to disprove Dr. Mishra's asserted defenses, but may prevail by simply pointing out that the evidence relied on by Dr. Mishra does not establish any legally valid defense, as the Hospital has established its *prima facie* case entitling it to repayment of the principal amount loaned under the Promissory Note and various related contract Addenda

making up the Loan Agreement.

8. The Hospital has also made out a *prima facie* case for recovery of pre-award interest, attorney's **[end 10 of 24]** fees and expenses.

9. The Hospital is also entitled to pre-award interest pursuant to the Loan Agreement and O.C.G.A. § 9-12-10, which provides: "In all cases where judgment is obtained, the judgment shall be entered for the principal sum due, with interest, provided the claim upon which it was obtained draws interest." *Id.*

10. If a promissory note or other contract sets an interest rate, that rate is enforceable. O.C.G.A. § 74-12 (If the judgment is rendered on a written contract or obligation providing for interest at a specified rate, the judgment shall bear interest at the rate specified in the contract or obligation.").

11. Here, the Loan Agreement specifies that Dr. Mishra is obligated to pay interest at a variable rate, calculated in this instance to be 6.25% per annum. (Exhibits p. 8; Transcript pp. 47-48, 169-170).

12. Interest starts to run upon default. O.C.G.A. § 7-4-14 ("In the absence of an agreement to the contrary, interest shall not run until default: hence, where money can be recovered because of mistake or other like reasons, no interest shall run until after demand and refusal to refund."); 74-15 ("All

liquidated demands, where by agreement or otherwise the sum to be paid is fixed or certain, bear interest from the time the party shall become liable and bound to pay them; if payable on demand, they shall bear interest from the time of the demand. In case of promissory notes payable on demand, the law presumes a demand instantly and gives interest from date.").

13. Dr. Mishra became liable for the amounts claimed on the date the first demand letter was issued and sent to her, and interest began to run on that date, pursuant to O.C.G.A. § 7-4-14. The Hospital has calculated the applicable interest and established those calculations at the arbitration **[end 11 of 24]** hearing. (Transcript pp. 169 *et seq.*). Dr. Mishra did not challenge those calculations at the hearing.

14. Plaintiff is also entitled to attorney's fees based on the express language of the Loan Agreement.

15. The Loan Agreement expressly provides for the recovery of attorney's fees. The Loan Agreement provides "If action is instituted on this Note the Maker shall pay the Holder the costs of collection and such sum as the Court may fix as attorney's fees and costs." (Exhibits p. 9 at final paragraph).

16. The Hospital sent a demand letter, pursuant to O.C.G.A. § 13-1-11, giving notice of the

defendant's obligation to pay attorney's fees if the debt was not paid as provided for therein. (Exhibits p. 90-91, 101-103; Transcript pp. 167-168). That gives rise to a duty to pay the Hospital's attorney's fees. O.C.G.A. § 13-1-11.

17. O.C.G.A. § 13-1-11 applies in arbitration proceedings in the same manner as it applies to lawsuits. *Joyner v. Raymond James Financial Services, Inc.*, 268 Ga. App. 835, 602 S.E. 871 (2004) (an arbitrator may award attorney's fees pursuant to O.C.G.A. § 13-6-11).

18. An attorney's fee provision in a contract is enforceable so long as: (1) the note's terms include an obligation to pay attorney's fees; (2) the debt owed under the note has matured; (3) notice was given to the debtor informing him that if he pays the debt within ten days of the notice's receipt, he may avoid attorney's fees; (4) the ten day period has expired without payment of the principal and interest in full; and (5) the debt is collected by or through an attorney. *Termnet Merchant Services, Inc. v. Phillips*, 277 Ga. 342, 344, 588 S.E.2d 745 (2003).

19. Here, all of the prerequisites for recovering attorney's fees based on the terms of the Loan **[end 12 of 24]** Agreement have been met. The Loan Agreement has a provision permitting recovery of attorney's fees, the promissory note has matured, notice was sent to Dr. Mishra under O.C.G.A. § 13-1-11

advising her of the obligation to pay attorney's fees if she did not tender the principal and interest due within 10 days, the 10 day period then expired without payment, and the debt has been pursued through an attorney.

20. As established above, the amounts owing are:

    a. Principal under the Loan Agreement of $88,691.81.
    b. Pre-Judgment Interest under the Loan Agreement totals $16,283.68, calculated at 6.25% from January 1, 2005, to the date of the arbitration hearing (1,072 days at $15.19 per diem).
    c. The amount owed under the Marketing Expense Reimbursement Addendum is $3,857.17.
    d. The amount owed under the Sign-On Bonus Addendum is $15.416.67.
    e. The amount of pre-award interest owing under the Marketing Expense Reimbursement Addendum and Sign-On Bouus Addendum is $3,96640, calculated at 7.00% from January 1, 2005 to present = 1,072 days at $3.70 per diem.
    f. The total of the foregoing amounts is $128,215.73.
    g. Dr. Mishra did not challenge the accuracy of those calculations at the hearing

21. The Hospital is entitled to attorney's fees

equal to 15% of the first $500.00 of that amount (i.e., $75), plus 10% of the remaining amount (i.e., 10% of $127,715.73 = $12,771.57). Thus, the total amount of attorney's fees owing pursuant to the express terms of the contract and O.C.G.A. **[end 13 of 24]** § 13-1-11 is $12,846.57.

22. The Hospital has proven a *prima facie* case of liability and damages against Dr. Mishra. Dr. Mishra signed a contract providing for loan payments, she received the benefit of the loan payments which went to her and CPC jointly and were utilized to pay her salary and benefits, she did not fulfill the contractual conditions for forgiveness of the loan, and she has not repaid the loan, and the loan and Georgia law provide for interest and attorney's fees. As such, Dr. Mishra is indebted to the Hospital for principal and interest in the amount of $128,215.73 and for statutory attorney's fees in the amount of $12,846.57.

DEFENSES

Dr. Mishra's Defense that the Loan Agreement Is a Contract of Adhesion Is Without Merit.

23. Dr. Mishra argued that her employer required her to sign the Loan Agreement with the Hospital, making it a contract of adhesion. That is factually inaccurate, and also legally unsupported.

24. As a factual matter, the employment

contract that Dr. Mishra signed with CPC stated that she would be required to sign additional, separate contracts with the Hospital. There is no evidence of physical coercion or threats related to Dr. Mishra signing the employment agreement. Rather, it was her freely chosen and voluntary act to sign the employment agreement with CPC, thereby also agreeing to sing the separate Loan Agreement.

25. When a doctor continues to work and accept compensation after signing a contract that was allegedly entered into under duress, the doctor waives the claim of duress and ratifies the contract. *Tidwell v. Critz*, 248 Ga. at 205 ("The courts of this state have also recognized that **[end 14 of 24]** accepting and retaining benefits arising from a contract executed under duress after removal of the duress, will result in a ratification of the contract.").

26. In sum, the defense that the Loan Agreement is a contract of adhesion is not factually or legal supported because Dr. Mishra freely signed a contract obligating her to sign the Loan Agreement and she then ratified that Loan Agreement by accepting its benefits.

Dr. Mishra's Defense that the Loan Agreement Violated Federal Healthcare Laws Is Without Merit.

27. Dr. Mishra claims that she was already

working in the Augusta, Georgia community at the time she signed the Loan Agreement, so that contract violated federal laws concerning a physician being recruited to a new community. That argument is also factually and legally baseless.

28. Dr. Mishra was living and practicing medicine in North Carolina in a small town near Greenville when she was recruited to move to and work in the Augusta community. (Transcript p. 203).

29. If Dr. Mishra signed the Loan Agreement days or even weeks after she moved to the Augusta community, that was simply the culmination of the process of recruiting her to move from North Carolina as part of the Loan Agreement and related employment agreement with CPC that she signed. There is no evidence from the arbitration hearing that Dr. Mishra moved to the Augusta community as an act unrelated to the Hospital's recruiting efforts with CPC.

30. To the contrary, the Loan Agreement that Dr. Mishra signed expressly states that she was induced to move to the Augusta community by that agreement. (Transcript pp. 38-39; Exhibits p. 1, 3, 7, 28).

31. As such, Dr. Mishra's assertion is inaccurate. She was not working in the Augusta community **[end 15 of 24]** before the Hospital and CPC recruited her to move pursuant to the Loan Agreement.

32. Furthermore, it would not be a violation of federal law concerning recruiting of physicians if the contract were signed after Dr. Mishra was already in the community so long as the contract was not a *quid pro quo* for referrals of patients to the hospital. *See e.g., U.S. ex rel Perales v. St. Margaret's Hosp.,* 243 F.Supp.2d 843 (C.D. Ill. 2003) (loans from hospital to physicians were not in violation of Anti-kickback Statute or Stark Act, even though physicians were all on active staff status with hospital when loans were made and they continued to be on active staff status throughout payback period of loans; loans were not contingent on referral requirement, amount of, or interest rate, for loans did not take into account volume or value of any referrals, and loans were at market rate of interest).

33. The Loan Agreement was not a *quid pro quo* for patient referrals to the hospital. To the contrary, the Loan Agreement expressly states that the Doctor is not required to refer patients of the Hospital. (Exhibits p. 4, ¶ 7) ("Physician shall employ his/her own means and methods and exercise his/her own independent medical judgment...including Physician's selection of hospitals for admission of, or services for, his/her patients."); (Exhibits p. 4, ¶ 8) ("Nothing in this Agreement shall be construed to require Physician to admit patients to Hospital or to utilize Hospital to provide inpatient, outpatient or any other services to patients

or otherwise generate business for Hospital.").

34. As such, the Loan Agreement complied with applicable federal law. *See US. ex rel Perales v. St. Margaret's Hosp.*, 243 F.Supp.2d 843 (C.D. Ill. 2003) (Loans from hospital to physicians were not in violation of Anti-kickback Statute or Stark Act when they did not require patient **[end 16 of 24]** referrals). Dr. Mishra signed that contract, indicating both parties' understanding that there was no requirement or inducement regarding patient referrals.

35. The Hospital also obligated itself to make the loan payments regardless of whether any patient referrals were made to it, so the loan payments were not legally or factually linked to patient admissions at the Hospital in any way.

Dr. Mishra's Defense that the Hospital Improperly Paid Her Employer Rather than Her Personally Is Without Merit.

36. Dr. Mishra claims that payments under the Loan Agreement went to CPC, not Dr. Mishra personally. Dr. Mishra has previously argued in her summary judgment motion that those facts constitute a failure of a condition precedent and also a failure of consideration. Those claims are without merit.

37. As an initial matter, Dr. Mishra never

objected to the loan payments, bonus payment, or any other payment going to CPC as her employer (for her benefit) rather than directly to her. That amounts to a ratification of the method of payment, or a waiver of any requirement that the loan payments go to Dr. Mishra personally.

38. Dr. Mishra's employment contract with CPC not only permits that payment arrangement, but actually requires it. (Exhibit p. 20; Transcript pp. 151-152; 270 ("Pursuant to these agreements [i.e., the Loan Agreement] any such monies ***are paid directly to CPC*** for use supplementing the doctor's collections and as payment to the doctor of the salary, benefits, practice and marketing expenses due hereunder.") (emphasis supplied).

39. The parties' conduct also shows that *was* their intent. Dr. Mishra signed a document titled **[end 17 of 24]** "Agreement as to Medical Practice's Role in Recruitment", specifying she is jointing a practice and not working as a sole practitioner. Dr. Mishra's employment contract with CPC states, at paragraph 10, that all payments from Doctor's Hospital of Augusta "are to be paid directly to CPC for use in supplementing in Doctor's collections and as payment to the Doctor of the salary, benefits, practice and marketing expenses due hereunder....", demonstrating that these payments would benefit here, even if not directly paid to her.

40. Dr. Mishra also signed a promissory note as

part of the Loan Agreement. That personally obligated her to repay the loan payments, regardless of the entity to which payments were made. Dr. Mishra has previously argued that because payments went to her employer for her benefit, rather than directly to her, there was a failure of consideration.

Dr. Mishra's Defense of Failure of Consideration is without merit.

41. Failure of consideration is not a viable defense in this situation. If a promisor gets what he or she has bargained for, there is no failure of consideration. *Fagala v. Morrison*, 146 Ga. App. 377, 377 (1978) (evidence showed that appellant received, the consideration for which he had bargained: 2,500 shares of stock in SMI, as well as all the rights, privileges, and benefits of a shareholder, director, and officer of SMI. Even assuming that the stock acquired became worthless, the worthlessness of the stock did not constitute a failure of consideration).

42. Further, the defense of failure of consideration is predicated on the happening of events which materially change the rights of the parties that were not within the contemplation of the parties at the time of the execution of the contract. *Shaw v. Miller*, 215 Ga. 413, 415 (1959).

43. Here, the Loan Agreement and employment agreement expressly state that payments

will go to **[end 18 of 24]** CPC. Dr. Mishra signed those agreements. No event occurred that materially changed the rights of the parties and was not within their contemplation when they signed the contracts. All understood payments would be made by the Hospital to CPC and that CPC would pay Dr. Mishra her salary, benefits, malpractice insurance, licensing fees, continuing education fees, etc.

44. In this case, the Hospital provided loan payments to guarantee a set amount of minimum revenue per month for a period of twelve (12) months in addition to the relocation expenses, marketing expenses and a sign on bonus in consideration for Dr. Mishra remaining in the community for a period of time, taking emergency room call and other consideration. Dr. Mishra received monetary compensation and employment benefits from CPC. The Hospital paid CPC as directed by the parties' agreements. As such, there was not a complete failure of consideration in this case.

Dr. Mishra's Defense that the Loan Agreement Imposed Involuntary Servitude or Peonage Is Without Merit.

45. Dr. Mishra has claimed that the Loan Agreement subjects her to involuntary servitude or peonage. The United State District Court for the Southern District of Georgia has already ruled on that issue and rejected the defense. The District Court

entered an Order on October 16, 2006, regarding Dr. Mishra's Motion for Reconsideration. As part of that Order the Court expressly ruled: "Plaintiff presents no reason to suppose that this conclusion was erroneous. (U.S. District Court, Southern District of Georgia CM/ECF Docket Entry No. 98).

46. Judicial notice may be taken of pleadings from a prior case in order to determine if the prior case was res judicata on a later proceeding. *See Enchanted Valley RV Resort, Ltd. v. Weese*, 241 Ga. **[end 19 of 24]** App. 415, 421, 526 S.E.2d 124, 130 (1999) (headnote 11; party failed to seek judicial notice of pleadings from prior action or otherwise put pleadings into evidence and, thus, did not prove res judicata).

47. Based on the District Court's prior resolution of the peonage argument between the same parties, that claim has already been fully litigated and the prior ruling is res judicata.

48. Dr. Mishra's remedy if the District Court erred was to appeal to the Eleventh Circuit Court of Appeals, not to reargue the point in the instant arbitration. In fact, Dr. Mishra did appeal to the Eleventh Circuit Court of Appeals, and did not prevail. There is no basis to reargue the merits of the peonage claim in this proceeding.

Dr. Mishra's Defense that the Dispute Is Not Subject To Arbitration Is Without Merit.

49. Dr. Mishra has at various times claimed that this dispute is not subject to arbitration, and she reiterated that claim at the arbitration hearing. Dr. Mishra has argued that O.C.G.A. § 9-92(c)(9) requires initials of the parties next to arbitration clauses in contracts arising out of employment in order for the arbitration clause to be valid.

50. The Loan Agreement being enforced does not arise out of employment by the Hospital of Dr. Mishra. As already noted, Dr. Mishra worked for CPC. This is not an action to enforce her employment contract with CPC. It is an action on a loan agreement with the Hospital, which Dr. Mishra agrees was not her employer. As such, there was no requirement that Dr. Mishra initial the arbitration provision in the Loan Agreement because it was not her employment contract.

51. The U.S. District Court has already ruled on this issue adversely to Dr. Mishra in determining to refer the action to arbitration, making it *res judicata* that the dispute does not arise from an **[end 20 of 24]** employment contract which required initials next to the arbitration provision to be valid. Dr. Mishra relies on Georgia law, but the Federal Arbitration Act ("FAA") applies according to the District Court's decision, and the FAA does not require that the parties initial arbitration provisions for such provisions to be enforceable. *See Primerica Financial Services, Inc. v. Wise*, 217 Ga. App. 36, 40-41

(1995) (Georgia state law initialing requirement applicable to arbitration provisions in employment agreements is preempted by FAA when FAA applies).

Dr. Mishra's Defense that Enforcing the Loan Agreement Would be Violative of "Good Faith" Requirements Is Without Merit.

52. Although all contracts carry an implied duty to act in good faith, that duty does not deny a party its rights under the express terms of the contract. "It is a well-recognized principle of contract law that both parties are under an implied duty of good faith in carrying out the mutual promises of their contract. A duty of good faith and fair dealing is implied in all contracts in this state. However, it is also well-settled that a party does not breach its obligation of good faith where it exercises a right that it has under the contract. In a recent decision, the Georgia Court of Appeals held that McBride Realty was entitled to a ten percent commission under the terms of the management agreement, and insisting that it be paid that amount did not constitute a breach of its obligation of good faith. The trial court, therefore, erred in failing to award the full commission due McBride Realty." *Tommy McBride Realty, Inc. v. Nicholson*, 286 Ga. App. 135, 648 S.E.2d 468 (2007). In the instant proceeding, the Hospital cannot be denied the right to recoup loan payments that were not forgiven — which is an express contract right — based on an implied duty.

[end 21 of 24]

53. The case at hand is similar to the case of *Walker v. Gwinnett Hosp. System, Inc.*, 263 Ga. App. 554, 588 S.E.2d 441 (2003). In the *Walker* case, a hospital sued Dr. Walker to recover amounts loaned to Dr. Walker in the form of a guarantee of a certain amount of monthly revenue for 12 months, as the Hospital did with Dr. Mishra in the matter at hand. In the *Walker* case, a hospital sued to recover amounts under the loan agreement and Dr. Walker asserted a breach of the implied duty of good faith. Dr. Walker's claim was that the hospital had refused to approve of his hiring of a fifth doctor, which caused his practice to lose money which made it impossible for him to repay the loan, much like Dr. Mishra has claimed the Hospital should have bought her practice, given her a new loan, or some similar assistance. In *Walker*, the Georgia Court of Appeals held that such claims do not constitute a defense to a claim on a loan agreement and that summary judgment for the hospital is appropriate.

Dr. Mishra's Equitable Estoppel Defense is Without Merit.

54. Equitable arguments, such as claiming an equitable estoppel against the Hospital's repayment rights, are also inapplicable to this situation. There is no evidence to support the defense of estoppel. "In order for an equitable estoppel to arise, there must generally be some intended deception in the

conduct or declarations of the party to be estopped, or such gross negligence as to amount to constructive fraud, by which another has been misled to his injury." O.C.G.A. § 24-4-27. Dr. Mishra did not introduce any evidence of intended deception by the Hospital.

Dr. Mishra's Defense that She Did Not Breach the Loan Agreement's Requirement To Work in Augusta, Georgia because She Never Worked in Augusta, Georgia Is Without Merit.

55. Dr. Mishra contends that she did not breach the Loan Agreement's requirement to work in the **[end 22 of 24]** Augusta, Georgia community because she never worked in Augusta, Georgia, but rather worked in North Augusta, which is in South Carolina. Dr. Mishra claims the Hospital waived the requirement for her to work in Augusta, Georgia by making payments pursuant to the Loan Agreement with knowledge that she was actually working in North Augusta, South Carolina. The waiver argument lacks merit because the totality of the parties' Loan Agreement indicates they understood the term "community" to include North Augusta as part of the Augusta "community.

56. All of the parties knew from the outset that Dr. Mishra would be working in North Augusta, which is in South Carolina, The Recruiting Agreement refers to "Augusta, Georgia," as "the `Community'. (Exhibit p. 3; 1st recital clause). That same Recruiting

Agreement noted that Dr. Mishra was required to be "duly licensed as a physician in the State of Georgia & ***South Carolina.***" (Exhibit p. 3 at ¶ 2a) (emphasis supplied). The reference to South Carolina was because the parties understood Dr. Mishra was working in North Augusta, South Carolina. *See e.g.*, Transcript pp. 91-92 (community needs study for recruiting Dr. Mishra to move to new community referenced Aiken County, South Carolina). Otherwise, that reference would be unnecessary since the Hospital itself was located within Georgia. The marketing expense reimbursement addendum, which is a part of the parties' Loan Agreement, references the doctor's practice located at "105 Hugh Street, ***North Augusta, South Carolina*** 29841." (Exhibits p. 10 at ¶ 1) (emphasis supplied).

57. All of these contractual documents were signed *as* part of one agreement by both the Hospital and Dr. Mishra. As indicated by these express terms of the Loan Agreement, the parties' **[end of 23 of 24]** intended from the outset for Dr. Mishra to work in North Augusta, and understood that was part of the Augusta "community" as that term was used throughout the Loan Agreement.

58. There is no waiver of the requirement that Dr. Mishra work in the "Community" because the community was defined in the contract and by the parties' conduct to include North Augusta, South Carolina.

Award of Damages

Award is hereby entered in favor of Doctors Hospital of Augusta and against Dr. Mishra for the principal and interest sum of $128, 215.73, plus statutory attorney's fees of $12,846.57.

This 16th day of April, 2008.
/s/ Ellwood F. Oakley, III
American Health Lawyers Association Arbitrator

I have served a copy of this Award this date on the following counsel:

Michael J. Thomerson, Esq.
Michael D. Robl, Esq.
John P. Batson, Esq.
Rita Brinley, AHLA
[end 24 of 24]

[DOC 127 or R9-127]
IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

SEEMA L. MISHRA, M.D., on her own behalf, individually, and on behalf of her patients, both private pay and those receiving Medicaid or Medicare from the federal government or financial assistance for healthcare from the State of South Carolina,	*	
Plaintiff,	*	
v.	*	CV 105-101
HCA INC., privately and under color of law; DOCTORS HOSPITALOF AUGUSTA, LLC d/b/a DOCOTRS HOSPITAL OF AUGUSTA; and its parent privately and under color of law; JOHN DOE OR ANY AGENT OF HCA INC., individually and under color of law; THE CENTER FOR PRIMARYCARE; and JIM LARSON,	*	
Defendants.	*	

FILED
U.S. DISTRICT COURT
AUGUSTA DIV
2009 MAR 26 PM 3:23
CLERK: /s/ C. Adams

ORDER

Presently before the Court in the captioned case are Plaintiff's motion to vacate the arbitration award and the motion by Defendants HCA Inc. and Doctors Hospital of Augusta, LLC, d/b/a Doctors Hospital of Augusta (hereinafter "the HCA Defendants") to confirm the award. Plaintiff has also filed
DEB (42) CCC: **[end 1 of 13]**
motions for discovery, two motions for a hearing, and a motion to stay. For the following reasons, the HCA Defendants' motion to confirm the arbitration award is **GRANTED** and Plaintiff's motion to vacate the award is **DENIED.** Consequently, Plaintiff's other motions are also **DENIED.**

I. Background

Plaintiff is a physician who, at the time the complaint was filed, was licensed in Georgia and South Carolina. (Am. Compl. ¶ 9.) On October 14, 2003, Plaintiff entered into an employment contract with Defendant, Center for Primary Care. (Id. ¶ 25.) On November 16, 2003, Plaintiff signed Defendant Doctors Hospital's "Recruiting Agreement" and other related agreements (collectively, the "Loan Agreement"). (Id. ¶¶ 26- 30.) The Loan Agreement

provided that Doctor's Hospital would loan money, subject to conditions, to help Plaintiff move to the Augusta area and establish a medical practice there. (Mot. Confirm Arb. Award at Ex. A ¶ 6.) The money would be paid on a monthly basis and would be calculated from the difference between the monthly gross revenue generated by Plaintiff and $20,000. (Id.) The Hospital would make loan payments for 12 months. (Id. ¶ 8.) Then, so long as Plaintiff performed under the agreement, each month the Hospital would forgive 1/36 of the total debt for 36 months. (Id.) Thus, if **[end 2 of 13]** Plaintiff performed under the Loan Agreement, she would owe the Hospital nothing at the conclusion of 48 months. (Id.)

In December 2004, Defendant Jim Larson terminated Plaintiff's employment at Defendant Center for Primary Care because she had failed to keep medical records current. (Am. Compl. ¶¶ 46-47.) Not long after her termination, Defendant Doctors Hospital notified Plaintiff that she was in breach of the Recruiting Agreement because she had (1) ceased practicing medicine in the geographic area served by Defendant Doctors Hospital; (2) failed to maintain privileges at Defendant Doctors Hospital, and (3) not been available for emergency room coverage at Defendant Doctors Hospital. (Id. ¶¶ 49, 55, & 64.)

Among its many provisions, the Recruiting Agreement has a clause which mandates the arbitration of "any controversy or claim arising out of or related to [the Recruiting Agreement] , or any breach thereof."[14] (Id. ¶ 31; Decl. of Seema Mishra,

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[14] The full text of the arbitration clause states:

Any controversy or claim arising out of or

[end 3 of 13] Ex. 2 ¶ 13.)[15] In response to Defendant Doctors Hospital's demand for arbitration, Plaintiff filed this lawsuit wherein she argued that the Recruiting Agreement should not be enforced. Among their responses to Plaintiff's complaint, the HCA Defendants moved to stay proceedings and compel arbitration pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 et seq. I granted Defendants' motion and the case was stayed pending the outcome of the arbitration. The parties met before the arbitrator on December 7, 2007. The arbitrator rendered his decision on April 16, 2008, through a lengthy memorandum containing his conclusions of fact and law. The case

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> related to this Agreement, or any breach thereof, shall be settled by arbitration in accordance with the rules and procedures of alternative dispute resolution and arbitration established by the Alternative Dispute Resolution Service of the American Health Lawyers Association ("AHLA"), and judgment upon any award rendered may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted before a single AHLA Arbitrator selected jointly by the parties, or in the event the parties are unable to agree, designated by AHLA.

[15] The Recruiting Agreement is attached to Plaintiff's declaration which was filed with the original complaint. While this document is not attached to the Amended Complaint, I consider it to be part of the pleadings because it is referenced extensively in the Amended Complaint and is central to Plaintiff's claims. See Brooks v. Blue Cross and Blue Shield of Florida, Inc., 116 F.3d 1364, 1369 (11th Cir. 1997).

was subsequently reopened and the parties now seek to establish the validity of the award.

II. Analysis

My review of this commercial arbitration award is controlled by the Federal Arbitration Act ("FAA"). See 9 U.S.C. §§ 1-16. The FAA creates a strong presumption that federal courts will confirm arbitration awards and strictly limits a court's ability to vacate an arbitrator's award to **[end 4 of 13]** four narrow statutory bases. Id. §§ 9, 10(a).[16] They are:

(1) Where the award was procured by corruption, fraud, or undue means.

(2) Where there was evidence partiality or corruption in the arbitrators, or either of them.

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party may have been prejudiced.

(4) Where the arbitrators exceeded their

---

[16] Contrary to Plaintiff's assertion, an arbitration award may not be vacated "upon such grounds as exist at law or in equity for the revocation of any contract." (Mot. Vacate Arb. Award at 10 (citing 9 U.S.C. § 2).) The language cited by Plaintiff applies only to the question of whether a an agreement to arbitrate is enforceable as a matter of contract law, not whether the award given by an arbitrator must be confirmed. I have already ruled that the parties' contract compels this dispute to be resolved in arbitration. (doc. no. 86).

> powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Id. § 10(a). The FAA requires courts to "grant confirmation in all cases, except where one of the 'proscribed' exceptions applies." Hall St. Assocs. LLc. V. Mattel, Inc., U.S. , 128 S. Ct. 1396, 1405 (2008). Additionally, the Eleventh Circuit has recognized three additional grounds upon which an arbitration award bay be vacated: the award is arbitrary and capricious; the enforcement of the award is contrary to public policy; or the arbitrator acted in manifest disregard for the law. Montes v. Shearson Lehman Brothers, Inc., 128 F.3d 1456, 1458-61 (11th Cir. 1997). In a case like this one, where the **[end 5 of 13]** arbitrator has provided the rationale for his award, the Eleventh Circuit has instructed the district court not to initially conduct a review of the award to determine if it rests on a rational basis. Brown v. Rauscher Pierce Refsnes Inc., 994 F.2d 775, 779 (11th Cir. 1993). Instead, the court need only consider the grounds raised by the party seeking to vacate the award. Id. In this case, Plaintiff asserts the following grounds to vacate the award: (1) the award violates federal law; (2) the arbitrator showed partiality to the HCA Defendants; (3) the arbitrator failed to make complete findings so that a final award was not made; and (4) the arbitrator exceeded his powers. Additionally, Plaintiff claims that the arbitrator made a number of errors with regard to his interpretations of law and his findings of fact. I view these objections as attempts to assert that the arbitrator displayed manifest disregard for the law.

A. The Award Violates Federal Law

Plaintiff first argues that the arbitration award must be vacated because it violates federal law. While the HCA Defendants protest that this is "not even one of the valid, recognized reasons for a district court to vacate an arbitration order," I think Plaintiff's argument may fairly be characterized as an assertion that confirmation of the award **[end 6 of 13]** would violate public policy. "Typically, the public policy exception is implicated when enforcement of the award compels one of the parties to take action which directly conflicts with public policy." Brown, 994 F.2d at 782. Plaintiff asserts that confirmation of the arbitration award would cause a violation of the Anti-Kickback Statute 42 U.S.C. §§ 1320(a) - 7(b) (also known as the Stark Act). The arbitration award, among other things, requires Plaintiff to repay the HCA Defendants for monies they paid pursuant to the Loan Agreement. Plaintiff argues because the HCA Defendants made some of these payments directly to her former employer, the HCA Defendants are therefore involved in a scheme to pay her former employer for referrals to the hospital owned by the HCA Defendants. Plaintiff made this argument to the arbitrator, and he correctly rejected it. The arbitrator found that no funds were given to CPC in exchange for patient referrals. (Mot. Confirm Arb. Award at Ex. A ¶¶ 32-34.) In fact, the agreement between the HCA Defendants and Plaintiff expressly provides that "nothing in this Agreement shall be construed to require Physician to admit patient to Hospital ... or otherwise generate business for Hospital." Id. ¶ 33. Accordingly, the arbitration award will not compel any of the parties to take action in violation of the

federal law as Plaintiff contents, and I decline to vacate the award on **[end 7 of 13]** public policy grounds.

B. The Arbitrator's Partiality

Plaintiff also contends that the arbitrator displayed evident partiality because he "gave credit and weight and [sic] to paragraphs in the Employment Contract that favored the Hospital, but ignored paragraphs about the independent property right of Mishra as to the salary she earned elsewhere in the Employment Contract." (Mot. Vacate Arb. Award at 15.) In order to establish evident partiality on behalf of the arbitrator, a party must show "(1) an actual conflict exists or (2) the arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists." University Commons-Urbana, Ltd. v. Universal Constructors Inc., 304 F.3d 1331, 1339 (11th Cir. 2002). Plaintiff fails to articulate any actual or potential conflict of interest that could lead to a finding that the arbitrator displayed partiality against her. She alleges that the arbitrator displayed partiality by failing to interpret the contracts at issue in this case in the manner she would like. This assertion falls far short of evident partiality. Plaintiff elsewhere asserts that the arbitrator's comment that he was "familiar" with the type of physician recruiting documents at issue in the case also fails to **[end 8 of 13]** demonstrate partiality. An arbitrator's familiarity with an area of law is not, without more, -a conflict that gives rise to finding of partiality. Accordingly, I cannot vacate the arbitration award on the grounds of evident partiality.

C. The Arbitrator's Performance of His Duties

Plaintiff also contends that the arbitrator exceeded his powers or otherwise so imperfectly performed his duties that he failed to make a definitive award on the subject matter submitted. Plaintiff's argument amounts to little more than "The Arbitrator exceeded his power under Stark." (Mot. Vacate Arb. Award at 15.) This claim appears to be nothing more than a recasting of Plaintiff's earlier assertion that the HCA Defendants and Plaintiff's former employer were engaged in conduct that violates the Anti-Kickback statute. The stature does not serve as a legal barrier to the arbitrator's ability to decided liability under the Loan Agreement between Plaintiff and the HCA Defendants. This question of liability is precisely the matter the arbitrator as charged with deciding and therefore was well within his power to address.

Next Plaintiff asserts that the arbitrator imperfectly performed his duties because "he has created the judicially created fact and conclusions of law, that Mishra owned the practice." Id. at 16. Plaintiff merely asserts that the **[end 9 of 13]** arbitrator imperfectly performed his duties, which is insufficient statutory grounds for vacating an award. Instead, the statute requires that the arbitrator's imperfections be so total and abysmal that he fails to make any definitive award at all. See 9 U.S.C. § 10(a)(4). Plaintiff does not and cannot allege that the arbitrator failed to make an award on the issue of liability pursuant to the agreement between her and the HCA Defendants. That the Plaintiff dislikes and disagrees with the award is perhaps to be expected;

however these Objections are insufficient grounds to vacate the award.

D. Manifest Disregard for the Law

Plaintiff also fills her brief with copious objections to the conclusions of law and fact reached by the arbitrator. Most of these objections are repetitions of arguments made directly to the arbitrator, which he in turn rejected. (See Mot. Vacate Arb. Award at 26-39; Mot. Confirm Arb. Award at Ex. A ¶¶ 23-58.) These assertions fall far short of the high bar required to vacate an arbitration award because the arbitrator demonstrated manifest disregard for the law. As the Eleventh Circuit has explained, "This. ground requires clear evidence that the arbitrator was 'conscious of the law and deliberately ignored it.' A showing that the arbitrator **[end 10 of 13]** merely misinterpreted, misstated, or misapplied the law is insufficient." B.L. Harbert Internat'l LLC v. Hercules Steel Co., 441 F.3d 905, 910 (11th Cir. 2006) (citations omitted). Judge Carnes' analysis in B.L. Harbert could well apply here:

> The facts of this case do not come within shouting distance of the Montes exception [for manifest disregard]. This is a typical contract dispute in which the parties disagree about the meaning of terms of their agreement. There are arguments to be made on both sides of the contractual interpretation issue, and they were made to the arbitrator before being made to the district court...Even if we were convinced that

> we would have to decide this contractual dispute differently, that would not be nearly enough to set aside the award.

Id. at 912 (citation omitted). Plaintiff fails to show that the arbitrator deliberately ignored any applicable law in reaching his decision. Again, the fact that Plaintiff disagrees with the arbitrator' s interpretation of the contract language is irrelevant. For me to individually assess each of Plaintiff's disagreements with the arbitrator would be more than a mere waste of this Court's time and resources; it would run counter to Congress' intent in passing the FAA. The Supreme Court has described the FAA as "substantiating a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway." Hall St. Assoc. LLC, 128 S. Ct. at 1405. Accordingly, I refuse to open "the door to the full-bore legal and evidentiary appeals that can 'rende[r] **[end 11 of 13]** informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process." Id. (citation omitted).

E. Plaintiff's Additional Motions

Plaintiff also moves for the Court to stay its decision on whether to confirm or vacate the award pending the outcome of other issues in this litigation. Plaintiff states this Court's priorities exactly backwards. The FAA compels confirmation of an arbitration award unless that award is vacated, modified, or corrected. Id. at 1402. Because Plaintiff has not moved to correct or modify the award and

because I find that her motion to vacate fails, the award must be confirmed. Accordingly, I will not delay confirmation of the award while Plaintiff litigates her claims against the other defendants.

I also decline Plaintiff's invitation to stay the case so that she may seek discovery in the form of deposing the arbitrator. I have already found Plaintiff's charge of partiality to be without merit, and I will not countenance a time-consuming and legally pointless inquiry into whether the arbitrator's familiarity with contracts frequently utilized in the recruiting of physicians resulted in partiality.

Plaintiff also has filed two requests for hearings: one **[end 12 of 13]** hearing on the issue of whether to vacate or confirm the arbitration award and another on the issue of whether to stay the case. The briefs of the parties on these issues have provided the Court with ample aid to dispose of the pending motions without the need for a hearing.

III. Conclusion

Upon the foregoing, Defendants HCA Inc. and Doctors Hospital's motion to confirm the arbitration award (doc. no. 104) is **GRANTED** and Plaintiff's motion to vacate (doc. no. 100) is **DENIED.** Plaintiff's motions for a hearing (doc. nos. 111, 113), her motions to stay (doc. no. 108), and her motion for discovery (doc. no. 110) are also **DENIED.** Defendants HCA Inc. and Doctors Hospital of Augusta, LLC, d/b/a Doctors Hospital are entitled to post-judgment interest, computed from the date of the award, April 16, 2008, until the date of this

Order. The HCA Defendants shall file an affidavit within the next five (5) days that establishes the rate and total amount of interest to be awarded. Upon receipt of the affidavit, the Court will instruct the Clerk to enter final judgment in accordance with the award of the arbitrator.

ORDER ENTERED at Augusta, Georgia, this 26th day of March, 2009.

/s/Dudley H. Bowen, Jr
U.S. DISTRICT COURT JUDGE

[end 13 of 13]

[DOC 129 or R9-129]
IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

SEEMA L. MISHRA, M.D., on her own behalf, individually, and on behalf of her patients, both private pay and those receiving Medicaid or Medicare from the federal government or financial assistance for healthcare from the State of South Carolina,	*	
Plaintiff,	*	
v.	*	CV 105-101
HCA INC., privately and under color of law; DOCTORS HOSPITALOF AUGUSTA, LLC d/b/a DOCTORS HOSPITAL OF AUGUSTA, and its parent, privately and under color of law; JOHN DOE, OR ANY AGENT OF HCA INC., Individually and under color of law; THE CENTER FOR PRIMARY CARE; and JIM LARSON	*	
Defendants.	*	

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION
FILED IN OFFICE
11:30 AM
APR 17, 2009
/s/B.McCarthy

ORDER

The Court has received the affidavit of counsel for the HCA Defendants which details the rate and amount of interest due to Defendants on the principle of the various loans made to Plaintiff running from the date of arbitration award until the date of my order confirming the award. Defendants'

DHB (42) CCC: /s/ DHB
/s/ BMC

[end 1 of 3]

Counsel categorizes this interest as "pre-judgment interest," ostensibly because it covers the time before entry of final judgment by this Court. However, I termed this interest "post-judgment interest" because it began to accrue after the entry of the arbiter's award and to distinguish it from the interest that accrued before the arbitration award. It was this post-award and pre-judgment interest to which I determined Defendants were entitled in my previous Order. Furthermore, I decline to assess interest after the entry of judgment in this Court and fully trust that Plaintiff will promptly comply with my Order of judgment. Accordingly, the Clerk

is **INSTRUCTED** to **ENTER FINAL JUDGMENT** on behalf of HCA Defendants as follows:

1. Principle under the Loan Agreement of $88,691.81;
2. Pre-Award Interest under the Loan Agreement totaling $16,283.68 as of the date of the arbitrator's award, April 16, 2008, calculated at 6.25% from January 1, 2005 through April 16, 2008;
3. Pre-Judgment Interest under the Loan Agreement totaling $5,225.36 as of the date of the Order confirming the award, March 26, 2009, calculated from April 17, 2008 through March 26, 2009.
4. Principal under the Marketing Expense Reimbursement Addendum of $3,857.17; **[end 2 of 3]**
5. Principal under the Sign-On Bonus of Addendum of $15,416.67;
6. Pre-Award Interest under the Marketing Expense Reimbursement Addendum and the Sign-On Bonus Addendum totaling $3,966.40, as of the date of the arbitration award, April 16, 2008, calculated at 7.00% from January 1, 2005 through April 16, 2008;
7. Pre-Judgment Interest under the Marketing Expense Reimbursement Addendum and the Sign-On Bonus Addendum totaling $1,272.80, as of the date of the Order confirming the award, March 26, 2009, calculated from April 17, 2008 through March 26, 2009; and

8. Attorney's fees owing pursuant to the express terms of the contract and O.C.G.A. § 13-1-11 in the amount of $12, 846.57.

ORDER ENTERED at Augusta, Georgia, this 17th day of April, 2009.

/s/ Dudley H. Bowen, Jr.
U.S. DISTRICT JUDGE

[end 3 of 3]

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELVENTH CIRCUIT

No. 09-12548
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELVENTH CIRCUIT
Dec. 03, 2009
THOMAS K. KAHN
CLERK

D. C. Docket No. 05-00101-CV-1-DHB-WLB

M. D. SEEMA L. MISHRA,
on her own behalf, individually, and on behalf of her patients, both private pay and those receiving Medicaid or Medicare from the federal government or financial assistance for health care from the State of South Carolina,

Plaintiff-Appellant,

versus

DOCTORS HOSPITAL OF AUGUSTA, LLC, and its parent, The Corporation of America (sic, Healthcare Corporation HCA, Inc., privately and under color of law of America),

Defendants-Cross-
Claimant-Appellees,

THE CENTER FOR PRIMARY CARE,

Defendant-Cross-

Defendant-Appellee,

JIM LARSON, GALEN HOLDCO, LLC,
privately and under color of law, et al.

Defendants-
Appellees.

[end 1 of 3]

Appeal from the United States District Court
for the Southern District of Georgia
(December 3, 2009)

Before TJOFLAT, EDMONDSON and HILL, Circuit Judges.

PER CURIAM:

This appeal arises from the district court's order compelling arbitration and subsequently confirming the arbitrator's award of damages, fees and costs against plaintiff for violating her recruitment agreement with defendants. We have reviewed the parties' briefs and the record excerpts and conclude that the district court did not err in compelling arbitration or in affirming the arbitration award.

Plaintiff did not substantiate her denial of the arbitration contract with evidence sufficient to made the denial colorable. *Chastain v. Robinson-Humphrey Co.*, 957 F.2d 851, 855 (lth Cir. 1985) (sic). Nor did she demonstrate that the subsequent award falls into those narrow circumstances where we are authorized to set it aside. *See First Options of Chicago, Inc., v. Kaplan*, 514 U.S. 938, 942 (1995). She has shown neither fraud, partiality, misconduct

nor malfeasance on the part of the arbitrator. Nor has she demonstrated that the award was arbitrary, violative of public policy or entered in manifest disregard of the law. *See Scott v.* **[end 2 of 3]** *Prudential Sec. Inc.*, 141 F.3d 1007, 1017 (11th Cir. 1998). In the absence of such showings, we are without authority to vacate the award.

Accordingly, the district court's Order affirming the arbitrator's award and judgment for defendants is hereby

AFFIRMED. **[end 3 of 3]**

Other Relevant Orders

[DOC 91 or R7-91]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-14552-G

M.D. SEEMA L. MISHRA, on her
Own behalf, individually, and
on behalf of her patients, both
private pay and those receiving
Medicaid or Medicare from the federal
government or financial assistance
for health care from the State of
South Carolina,

Plaintiff-Appellant,

CV105-101

versus

DOCTOR'S HOSPITAL OF AUGUSTA, LLC,
And its parent, The Corporation of
America (sic, Healthcare Corporation
Of America), d.b.a. Doctors
Hospital of Augusta,
THE CENTER FOR PRIMARY CARE, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Georgia

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT OCT 4 2006 THOMAS K. KAHN CLERK
FILED U.S. DISTRICT COURT AUGUSTA DIV 2006 OCT -5 P 3:43 10:17 CLERK: /s/C. Adams

Before BLACK, BARKETT, and WILSON, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, sua sponte, for lack of jurisdiction. The district court's July 18, 2006, order compelling arbitration, staying the case, and dismissing some, but not all, defendants, **[end 1 of 2]** is not final and appealable. See 9 U.S.C. § 16(b); Brandon, Jones, Sandall, Zeide, Kohn, Chalal, & Musso, P.A. v. MedPartners, Inc., 312 F.3d 1349, 1354-56 (11th Cir. 2002); American Express Fin. Advisors, Inc. v. Makarewicz, 122 F.3d 936, 939 (11th Cir. 1997); 28 U.S.C. § 1291; Beluga Holding, Ltd. V. Commerce Corp., 212 F.3d 1199, 1202 (11th Cir. 2000); Fed.R.Civ.P. 54(b); Williams v. Bishop, 732 F.2d 885, 886 (11th Cir. 1984); In re Yarn Processing Patent Validity Litig., 680 F.2d 1338, 1340 (11th Cir. 1982).

No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir.R. 40-4 and all other applicable rules.

A True Copy – Attested
Clerk, U.S. Court of
Appeals
Eleventh Circuit
By: /s/Walle Pella
Deputy Clerk
Atlanta, Georgia

[end 2 of 2]

[DOC 98 or R7-98]
IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

SEEMA L. MISHRA, M.D., on her own behalf, individually, and on behalf of her patients, both private pay and those receiving Medicaid or Medicare from the federal government or financial assistance for healthcare from the State of South Carolina,	*	
Plaintiff,	*	
v.	*	CV 105-101
HCA INC., privately and under color of law; et al.,	*	
Defendants.	*	

FILED
U.S. DISTRICT COURT
AUGUSTA DIV
2006 NOV 29 A 11:22
CLERK: /s/L. Flanders
SO. DIST. OF GA.

ORDER

The captioned matter is before the Court on Plaintiff's "Motion to Amend Order to Assure Appellate Jurisdiction." (Doc. no. 93.) On July 18,

2006, I granted a motion to stay proceedings and compel arbitration filed by Defendants HCA, Inc. and Doctors Hospital. (Order of July 18, 2006 at 9.) Accordingly, all proceedings in this case have been stayed pending arbitration, and the case has been closed for statistical purposes. (Id. at 9-10.)
On July 28, 2006, Plaintiff asked me to reconsider my July 18th Order; on October 16, 2006, I denied that motion.
DHB (40) CCC: /s/DHB
[end 1 of 4]
(See Order of October 16, 2006.) Meanwhile, Plaintiff attempted to appeal my July 18th Order, which appeal was dismissed for lack of jurisdiction. See Mishra v. Doctors Hosp., No. 06-14552 (11th Cir. Oct. 4, 2006).

Plaintiff now asks me to "amend" my July 18th Order to make it final and appealable. Plaintiff also argues that, because her complaint seeks injunctive relief, she is entitled to an interlocutory appeal under 28 U.S.C. § 1292(a) (1) as one appealing the denial of an "interlocutory injunction." (Mot. at 2.) In the alternative, Plaintiff asks the Court to certify an interlocutory appeal under 28 U.S.C. § 1292(b). (Mem. in Supp. of Mot. at 15.) Upon consideration, I see no reason to "amend" my order in any way; nor will I certify an interlocutory appeal.

As the Eleventh Circuit pointed out in its order dismissing Plaintiff's appeal, my order "compelling arbitration, staying the case, and dismissing some, but not all, defendants, is not final and appealable." (Doc. no. 91 at 1-2 (citing 9 U.S.C. § 16(b); Brandon, Jones, Sandall, Zeide, Kohn, Chalal, & Musso, P.A. v. MedPartners, Inc., 312 F.3d 1349, 1354-56 (11th Cir. 2002); American Express Fin. Advisors, Inc. v.

Makarewicz, 122 F.3d 936, 939 (11th Cir. 1997); 28 U.S.C. § 1291; Beluga Holding, Ltd. v. Commerce Capital Corp., 212 F.3d 1199, 1202 (11th Cir. 2000); Fed. R. **[end 2 of 4]** Civ. P. 54(b); Williams v. Bishop, 732 F .2d 885, 886 (11th Cir. 1984) & In re Yarn Processing Patent Validity Litig., 680 F.2d 1338, 1340 (11th Cir. 1982)). Neither can the July 18th Order be rightly construed as denying an injunction and therefore immediately appealable under 28 U.S.C. § 1292(a) (1).

Finally, I am not persuaded that I should certify this matter for interlocutory review under § 1292(b). To obtain certification for an interlocutory appeal from this Court under § 1292(b), Plaintiff must meet each of three prerequisites outlined in the statute: 1) the prospective appeal involves a controlling question of law; 2) there is a *substantial* ground for difference of opinion; and 3) the appeal has the potential to *materially* advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b)(emphasis added). These three prongs are not easily met:

> [T]he appeal from interlocutory orders [under § 1292(b)] should and will be used only in exceptional cases where a decision of the appeal may avoid protracted and expensive litigation, as in antitrust and similar protracted cases, where a question which would be dispositive of the litigation is raised and there is serious doubt as to how it should be decided.

McFarlin v. Conseco Services, LLC, 381 F.3d 1251, 1256 (11th Cir. 2004)(internal quotation and citation

omitted).

Here, Plaintiff has provided no reason to suppose that there is "serious doubt" as to the conclusions of the July 18th Order. Neither is it apparent that an interlocutory **[end 3 of 4]** appeal has the potential to materially advance the termination of this case. Of course, I note that the arbitrability of this dispute is an issue which Plaintiff may raise in an appeal from a final judgment following the conclusion of this case if she so desires. In sum, Plaintiff's motion is **DENIED**.

ORDER ENTERED at Augusta, Georgia, this 29th day of November, 2006.

/s/ Dudley H. Bowan Jr.
UNITED STATES DISTRICT JUDGE

[end 4 of 4]

[DOC 146 or R_-146]
IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

SEEMA L. MISHRA, M.D., on her own behalf, individually, and on behalf of her patients, both private pay and those receiving Medicaid or Medicare from the federal government or financial assistance for healthcare from the State of South Carolina,	*	
Plaintiff,	*	
v.	*	CV 105-101
HCA INC., privately and under color of law; DOCTORS HOSPITALOF AUGUSTA, LLC d/b/a DOCTORS HOSPITAL OF AUGUSTA, and its parent, privately and under color of law; JOHN DOE, OR ANY AGENT OF HCA INC., Individually and under color of law; THE CENTER FOR PRIMARY CARE; and JIM LARSON	*	
Defendants.	*	

FILED
U.S. DISTRICT
COURT
AUGUSTA DIV
2010 APR 16 P 2:55
CLERK: /s/ T. Burton

ORDER

Plaintiff Seema Mishra filed the captioned case seeking to prevent Defendants HCA, Inc., Doctors Hospital of Augusta, Center for Primary Care, and Jim Larson ("HCA Defendants") from compelling the arbitration of a contract dispute. By Order dated July 18, 2006, this Court granted Defendants' motion to[1] compel arbitration.
DHB (43) CCC:/s/DHB **[end 1 of 6]**

compel. arbitration. The arbitrator rendered his decision on April 16, 2008, and judgment in the case was entered in favor of the Defendants on April 17, 2009. Presently before the Court is Plaintiff's motion for relief from judgment. (Doc. No. 137.) For the following reasons, Plaintiff's motion is **DENIED.**

I. Background

Plaintiff is a physician who is licensed in Georgia and South Carolina. (Am. Compl. ¶ 9.) On October 14, 2003, Plaintiff entered into an employment contract with Defendant Center for Primary Care. (Id. ¶ 25.) On November 16, 2003, Plaintiff signed Defendant Doctor Hospital's "Recruiting Agreement" and other related

agreements (collectively, the "Loan Agreement"). (Id. ¶¶ 26-30.) The Loan Agreement provided that Doctor's Hospital would loan money, subject to conditions, to help Plaintiff move to the Augusta area to establish a medical practice. (Mot. Confirm Arb. Award at Ex. A ¶ 6.)

In December 2004, Defendant Jim Larson terminated Plaintiff's employment at Defendant Center for Primary Care for failure to keep medical records current. (Am. Compl. ¶¶ 46-47.) After her termination from Center for Primary Care, Defendant Doctors Hospital notified Plaintiff that she was in **[end 2 of 6]** breach of the Recruiting Agreement because she had (1) ceased practicing medicine in the geographic area served by Defendant Doctors Hospital, (2) failed to maintain privileges at Defendant Doctors Hospital, and (3) been unavailable for emergency room coverage at Defendant Doctors Hospital. (Id. ¶¶ 49, 55, 64.)

Among its many provisions, the Recruiting Agreement has a clause which mandates the arbitration of "any controversy or claim arising out of or related to [the Recruiting Agreement], or any breach thereof." [17] (Id. ¶ 31; Decl. of Seema Mishra,

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[17] The full text of the arbitration clause states:

> Any controversy or claim arising out of or related to this Agreement, or any breach thereof, shall be settled by arbitration in accordance with the rules and procedures of alternative dispute resolution and arbitration established by the Alternative Dispute Resolution Service of the

Ex. 2 ¶ 13.) In response to Defendant Doctors Hospital's demand for arbitration, Plaintiff filed this lawsuit wherein she argued that the Recruiting Agreement should not be enforced. Defendants moved to stay the proceedings and compel arbitration pursuant to the Federal Arbitration Act. ("FAA"), 9 U.S.C. §§ 1 et. seq. By Order dated July 18, 2006, I **[end 3 of 6]** granted Defendants' motion to compel arbitration, and stayed the case pending the outcome of the arbitration. (Doc. No. 86.) The arbitrator rendered his decision on April 16, 2008, and the case was subsequently reopened when the Plaintiff challenged the validity of the award. Judgment in the case was entered in favor of the HCA Defendants on April 17, 2009. (See Doc. No. 129.) On May 13, 2009, Plaintiff filed a notice of appeal. (Doc. No. 134.) Seven days later, on May 20, 2009, Plaintiff filed the present motion for relief from judgment.[18] On December 3, 2009, the Eleventh Circuit denied Plaintiff's appeal, holding that "the

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American Health Lawyers Association ("AHLA"), and judgment upon any award rendered may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted before a single AHLA Arbitrator selected jointly by the parties, or in the event the parties are unable to agree, designated by AHLA.

[18] This Court lacked jurisdiction to consider Plaintiff's motion during the pendency of her appeal to the Eleventh Circuit. (See Doc. No. 143.)

district court did not err in compelling arbitration or in affirming the arbitration award." (Doc. No. 144.)

II. Analysis

The law of the case doctrine posits that when a court decides a rule of law, that decision "should continue to govern the same issues in subsequent stages of the same case." Arizona v. California, 460 U.S. 605, 618 (1983). The law of the case doctrine is "grounded in important considerations related to stability in the decision making process, predictability of results, proper working relationships **[end 4 of 6]** between trial and appellate courts, and judicial economy." United States v. Rivera-Martinez, 931 F.2d 148, 151 (1st. Cir. 1991). Although the doctrine is not an absolute bar to reconsidering issues previously decided, "as a rule courts should be loathe to do so in the absence of extraordinary circumstances." Christianson v. Colt. Indus., 486 U.S. 800, 816 (1988). Extraordinary circumstances exist when the decision was clearly erroneous and would work a manifest injustice.

An important corollary to the law of the case doctrine, known as the "mandate rule," requires a district court to comply strictly with the mandate rendered by the reviewing court. Thus, all issues expressly or impliedly considered on appeal remain the law of the case, and may not be disturbed, absent highly unusual circumstances. See Gulf Coast B. & S. Co. v. International Bro. of E.W., No. 480, 460 F.2d 105 (5th Cir. 1972) (where all issues were expressly or impliedly presented to

and disposed of by appellate court, district court lacked power to alter judgment); see also Ritter v. Smith, 811 F.2d 1398, 1404 (11th Cir. 1987) (district court may hear 60(b) motion without leave, but "[t]he mandate of an appellate court to a district court must be scrupulously adhered to by the district court on remand as the law of the case in all but the most extraordinary of situations"). **[end 5 of 6]**

In the instant case, the Eleventh Circuit's Opinion rejected, at least implicitly, the very arguments advanced in support of Plaintiff's Rule 60(b) motion. For this Court to vacate its judgment based on the same arguments Plaintiff asserted on appeal would disregard the Eleventh Circuit's Mandate affirming this Court's judgment in favor of the HCA Defendants. Plaintiff has not put forth any evidence that extraordinary circumstances warrant relief from this Court's judgment. The Court therefore declines to vacate its judgment.

Upon the foregoing, Plaintiff's motion for relief from judgment (Doc. No. 137) is **DENIED.**

ORDER ENTERED at Augusta, Georgia, this 16th day of April, 2010.

/s/Dudley H. Bowen, Jr.
U.S. DISTRICT COURT JUDGE

[end 6 of 6]

Orders on Reconsideration

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELVENTH CIRCUIT

No. 09-12548-CC
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELVENTH CIRCUIT
MAR 30 2010
JOHN LEY
CLERK

M. D. SEEMA L. MISHRA,
on her own behalf, individually, and on behalf of her patients, both private pay and those receiving Medicaid or Medicare from the federal government or financial assistance for health care from the State of South Carolina,

Plaintiff-Appellant,

versus

DOCTORS HOSPITAL OF AUGUSTA, LLC, and its parent, The Corporation of America (sic, Healthcare Corporation HCA, Inc., privately and under color of law of America),

Defendants-Cross-
Claimant-Appellees,

THE CENTER FOR PRIMARY CARE,

Defendant-Cross-
Defendant-Appellee,

JIM LARSON,
GALEN HOLDCO, LLC,
privately and under color of law, et al.

Defendants-
Appellees.

On Appeal from the United States District Court for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITIONS(S) FOR REHEARING EN BANC

[end 1 of 2]

Before: TJOBLAT, EDMONDSON and HILL, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ James C. Hill
UNITED STATES CIRCUIT JUDGE

[end 2 of 2]

[DOC 92 or R7-92]
IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

SEEMA L. MISHRA, M.D., on her own behalf, individually, and on behalf of her patients, both private pay and those receiving Medicaid or Medicare from the federal government or financial assistance for healthcare from the State of South Carolina,	*	
Plaintiff,	*	
v.	*	CV 105-101
HCA INC., privately and under color of law; et al.,	*	
Defendants.	*	

FILED
U.S. DISTRICT COURT
AUGUSTA DIV
2006 OCT 16 P 2:19
CLERK: /s/B. McCarthy

ORDER

This matter is before the Court of Plaintiff's "Motion to Reconsider Order of July 18, 2006." (Doc. no. 87.) On July 18th, I granted Defendant's motion

to compel arbitration and to stay this case pending arbitration. (Order of July 18th at 9.) Plaintiff now argues: (1) there is a triable issue of fact regarding whether there is an agreement or contract between the parties (Pl.'s Br. In Supp. Of Mot. To Reconsider at 1-8); and (2) compelling arbitration would be the equivalent of "compelling peonage." (Id. at 9.)

As Defendants correctly argue, a " 'party cannot place the making of the arbitration agreement in issue simply by opining **[end 1 of 2]** that no agreement exists. Rather, that party must substantiate the denial of the contract with enough evidence to make the denial colorable.' " (Defs.' Resp. to Pl.'s Mot. To Reconsider at 2 (quoting Chastain v. Robinson-Humphrey Co., 957 F.2d 851, 855 (11th Cir. 1992)).) Plaintiff has presented no such evidence. At any rate, the Court has already concluded that challenges which "relate[] to the underlying contract generally, and not to the arbitration clause specifically" present "a matter to be resolved by the arbitrator, not the federal court." (July 18th Order at 8 (quoting Jenkins v. First American Cash Advance of Georgia, LLC, 400 F.3d 868, 877 (11th Cir. 2005) (citing Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 406 (1967)).) Plaintiff presents no reason to suppose that this conclusion was erroneous. Neither does Plaintiff's "peonage" argument have any merit.

Accordingly, the motion for reconsideration is **DENIED**.

ORDER ENTERED at Augusta, Georgia, this 16th day of October, 2006..

/s/ Dudley H. Bowen, Jr.
U.S. DISTRICT JUDGE

[end 2 of 2]

[DOC 99 or R7-99]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-14552-G

M.D. SEEMA L. MISHRA, on her
Own behalf, individually, and
on behalf of her patients, both
private pay and those receiving
Medicaid or Medicare from the federal
government or financial assistance
for health care from the State of
South Carolina,

CV105-101
Plaintiff-Appellant,

versus

DOCTOR'S HOSPITAL OF AUGUSTA, LLC,
And its parent, The Corporation of
America (sic, Healthcare Corporation
Of America), d.b.a. Doctors
Hospital of Augusta,
THE CENTER FOR PRIMARY CARE, et al.,

Defendants-Appellees.

FILED
U.S. COURT OF
APPEALS
ELEVENTH CIRCUIT
DEC 13 2006
THOMAS K. KAHN

FILED
U.S. DISTRICT COURT
AUGUSTA DIV
2006 DEC 18 A 9:51
CLERK: /s/J. Howard

Appeal from the United States District Court for the Southern District of Georgia

Before BLACK, BARKETT, and WILSON, Circuit Judges.

BY THE COURT:

Appellant's motion for reconsideration of our October 4, 2006, order dismissing this appeal for lack of jurisdiction, is DENIED.

[end 1 of 1]

Constitutional, Statutory, and Regulatory Provisions

U.S. CONST. ART. I § 8, CL. 3

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

U.S. CONST. AMEND. I.

Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. AMEND. XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

U.S. CONST. AMEND. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 2201
§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

42 U.S.C. § 1395nn (Stark Act)
§ 1395nn. Limitation on certain physician referrals

(a) Prohibition of certain referrals

(1) In general Except as provided in subsection (b) of this section, if a physician (or an immediate family member of such physician) has a financial relationship with an entity specified in paragraph (2), then—

(A) the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this subchapter, and

(B) the entity may not present or cause to be presented a claim under this subchapter or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).

(2) Financial relationship specified

For purposes of this section, a financial relationship of a physician (or an immediate family member of such physician) with an entity specified in this paragraph is—

(A) except as provided in subsections (c) and (d) of this section, an ownership or investment interest in the entity, or

(B) except as provided in subsection (e) of this section, a compensation arrangement (as defined in subsection (h)(1) of this section) between the physician (or an immediate family member of such physician) and the entity.

An ownership or investment interest described in subparagraph (A) may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in any entity providing the designated health service.

(b) General exceptions to both ownership and compensation arrangement prohibitions

Subsection (a)(1) of this section shall not apply in the following cases: ...

(4) Other permissible exceptions

In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse. ...

(e) Exceptions relating to other compensation arrangements

The following shall not be considered to be a compensation arrangement described in subsection (a)(2)(B) of this section: ...

(2) Bona fide employment relationships

Any amount paid by an employer to a physician (or an immediate family member of such physician) who has a bona fide employment relationship with the employer for the provision of services if—

(A) the employment is for identifiable services,
(B) the amount of the remuneration under the employment—
  (i) is consistent with the fair market value of the services, and
  (ii) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician,
(C) the remuneration is provided pursuant to an agreement which would be

commercially reasonable even if no referrals were made to the employer, and

(D) the employment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

Subparagraph (B)(ii) shall not prohibit the payment of remuneration in the form of a productivity bonus based on services performed personally by the physician (or an immediate family member of such physician).

(3) Personal service arrangements

(A) In general

Remuneration from an entity under an arrangement (including remuneration for specific physicians' services furnished to a nonprofit blood center) if—

(i) the arrangement is set out in writing, signed by the parties, and specifies the services covered by the arrangement,

(ii) the arrangement covers all of the services to be provided by the physician (or an immediate family member of such physician) to the entity,

(iii) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement,

(iv) the term of the arrangement is for at least 1 year,

(v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and except in the case of a physician incentive plan described in subparagraph (B), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(vi) the services to be performed under the arrangement do not involve the counseling or promotion or a business arrangement or other activity that violates any State or Federal law, and

(vii) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(B) Physician incentive plan exception

(i) In general In the case of a physician incentive plan (as defined in clause (ii)) between a physician and an entity, the compensation may be determined in a manner (through a withhold, capitation, bonus, or otherwise) that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties, if the plan meets the following requirements:

(I) No specific payment is made directly or indirectly under the plan to a physician or a physician group as an inducement to reduce or limit medically necessary services provided with respect to a

specific individual enrolled with the entity.

(II) In the case of a plan that places a physician or a physician group at substantial financial risk as determined by the Secretary pursuant to section 1395mm(i)(8)(A)(ii) of this title, the plan complies with any requirements the Secretary may impose pursuant to such section.

(III) Upon request by the Secretary, the entity provides the Secretary with access to descriptive information regarding the plan, in order to permit the Secretary to determine whether the plan is in compliance with the requirements of this clause.

(ii) "Physician incentive plan" defined

For purposes of this subparagraph, the term "physician incentive plan" means any compensation arrangement between an entity and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the entity.

(4) Remuneration unrelated to the provision of designated health services

In the case of remuneration which is provided by a hospital to a physician if such remuneration does not relate to the provision of designated health services.

(5) Physician recruitment

In the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if—

(A) the physician is not required to refer patients to the hospital,

(B) the amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and

(C) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse. ...

(f) Reporting requirements

Each entity providing covered items or services for which payment may be made under this subchapter shall provide the Secretary with the information concerning the entity's ownership, investment, and compensation arrangements, including—

(1) the covered items and services provided by the entity, and

(2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A) of this section), or with a compensation arrangement (as described in

subsection (a)(2)(B) of this section), in the entity, or whose immediate relatives have such an ownership or investment interest or who have such a compensation relationship with the entity.

Such information shall be provided in such form, manner, and at such times as the Secretary shall specify. The requirement of this subsection shall not apply to designated health services provided outside the United States or to entities which the Secretary determines provides [FN2] services for which payment may be made under this subchapter very infrequently.

(g) Sanctions

(1) Denial of payment

No payment may be made under this subchapter for a designated health service which is provided in violation of subsection (a)(1) of this section.

(2) Requiring refunds for certain claims

If a person collects any amounts that were billed in violation of subsection (a)(1) of this section, the person shall be liable to the individual for, and shall refund on a timely basis to the individual, any amounts so collected.

(3) Civil money penalty and exclusion for improper claims

Any person that presents or causes to be presented a bill or a claim for a service that such person knows or should know is for a service for which payment may not be made under paragraph (1) or for which a refund has not been made under paragraph (2) shall be subject to a civil money penalty of not more than $15,000 for each such service. The provisions of section 1320a-7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(4) Civil money penalty and exclusion for circumvention schemes

Any physician or other entity that enters into an arrangement or scheme (such as a cross-referral arrangement) which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this section, shall be subject to a civil money penalty of not more than $100,000 for each such arrangement or scheme. The provisions of section 1320a-7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(5) Failure to report information

Any person who is required, but fails, to meet a reporting requirement of subsection (f) of this section is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made. The provisions of section 1320a-7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(6) Advisory opinions

(A) In general

The Secretary shall issue written advisory opinions concerning whether a referral relating to designated health services (other than clinical laboratory services) is prohibited under this section. Each advisory opinion issued by the Secretary shall be binding as to the Secretary and the party or parties requesting the opinion.

(B) Application of certain rules

The Secretary shall, to the extent practicable, apply the rules under subsections (b)(3) and (b)(4) of this section and take into account the regulations promulgated under subsection (b)(5) of section 1320a-7d of this title in the

issuance of advisory opinions under this paragraph.

(C) Regulations

In order to implement this paragraph in a timely manner, the Secretary may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

(D) Applicability

This paragraph shall apply to requests for advisory opinions made after the date which is 90 days after August 5, 1997, and before the close of the period described in section 1320a-7d(b)(6) of this title.

(h) Definitions and special rules

For purposes of this section:

(1) Compensation arrangement; remuneration

(A) The term "compensation arrangement" means any arrangement involving any remuneration between a physician (or an immediate family member of such physician) and an entity other than an arrangement involving only remuneration described in subparagraph (C).

(B) The term "remuneration" includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(C) Remuneration described in this subparagraph is any remuneration consisting of any of the following:

(i) The forgiveness of amounts owed for inaccurate tests or procedures, mistakenly performed tests or procedures, or the correction of minor billing errors.

(ii) The provision of items, devices, or supplies that are used solely to—

(I) collect, transport, process, or store specimens for the entity providing the item, device, or supply, or

(II)order or communicate the results of tests or procedures for such entity.

(iii) A payment made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee for service basis, for the furnishing of health services by that physician to an individual who is covered by a policy with the insurer or by the self-insured plan, if—

(I) the health services are not furnished, and the payment is not made, pursuant to a contract or other arrangement between the insurer or the plan and the physician,

(II)the payment is made to the physician on behalf of the covered individual and would otherwise be made directly to such individual,

(III) the amount of the payment is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals, and

(IV) the payment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(2) Employee

An individual is considered to be "employed by" or an "employee" of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

(3) Fair market value

The term "fair market value" means the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(4) Group practice

(A) Definition of group practice

The term "group practice" means a group of 2 or more physicians legally organized as a partnership, professional corporation,

foundation, not-for-profit corporation, faculty practice plan, or similar association—

(i) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment and personnel,

(ii) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed under a billing number assigned to the group and amounts so received are treated as receipts of the group,

(iii) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined,

(iv) except as provided in subparagraph (B)(i), in which no physician who is a member of the group directly or indirectly receives compensation based on the volume or value of referrals by the physician,

(v) in which members of the group personally conduct no less than 75 percent of the physician-patient encounters of the group practice, and

(vi) which meets such other standards as the Secretary may impose by regulation.

(B) Special rules

(i) Profits and productivity bonuses

A physician in a group practice may be paid a share of overall profits of the group, or a productivity bonus based on services personally performed or services incident to such personally performed services, so long as the share or bonus is not determined in any manner which is directly related to the volume or value of referrals by such physician.

(ii) Faculty practice plans

In the case of a faculty practice plan associated with a hospital, institution of higher education, or medical school with an approved medical residency training program in which physician members may provide a variety of different specialty services and provide professional services both within and outside the group, as well as perform other tasks such as research, subparagraph (A) shall be applied only with respect to the services provided within the faculty practice plan.

(5) Referral; referring physician

(A) Physicians' services

Except as provided in subparagraph (C), in the case of an item or service for which payment may be made under part B of this

subchapter, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a "referral" by a "referring physician".

(B) Other items

Except as provided in subparagraph (C), the request or establishment of a plan of care by a physician which includes the provision of the designated health service constitutes a "referral" by a "referring physician"...

(6) Designated health services

The term "designated health services" means any of the following items or services

(A) Clinical laboratory services.
(B) Physical therapy services.
(C) Occupational therapy services.
(D) Radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services.
(E) Radiation therapy services and supplies.
(F) Durable medical equipment and supplies.
(G) Parenteral and enteral nutrients, equipment, and supplies.
(H) Prosthetics, orthotics, and prosthetic devices and supplies.
(I) Home health services.

(J) Outpatient prescription drugs.
(K) Inpatient and outpatient hospital services.
(L) Outpatient speech-language pathology services...

42 U.S.C. § 1320a-7b (Anti-Kickback Act)

§ 1320a-7b. Criminal penalties for acts involving Federal health care programs

(a) Making or causing to be made false statements or representations

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program (as defined in subsection (f) of this section),

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,...

(b) Illegal remunerations

(1) whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under a Federal health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a Federal health care program;

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services; ...

(c) False statements or representations with respect to condition or operation of institutions

Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the

making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or entity in order that such institution, facility, or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity (including an eligible organization under section 1395mm(b) of this title) for which certification is required under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a-7(h) of this title), or with respect to information required to be provided under section 1320a-3a of this title, shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both...

(f) "Federal health care program" defined

For purposes of this section, the term "Federal health care program" means—

(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of Title 5); or

(2) any State health care program, as defined in section 1320a-7(h) of this title.

42 C.F.R. 411.357(e)(4)(ii)

(e) *Physician recruitment.*

(1) Remuneration provided by a hospital to recruit a physician that is paid directly to the physician and that is intended to induce the physician to relocate his or her medical practice to the geographic area served by the hospital in order to become a member of the hospital's medical staff, if all of the following conditions are met:

(i) The arrangement is set out in writing and signed by both parties;

(ii) The arrangement is not conditioned on the physician's referral of patients to the hospital;

(iii) The hospital does not determine (directly or indirectly) the amount of the remuneration to the physician based on the volume or value of any actual or anticipated referrals by the physician or other business generated between the parties; and

(iv) The physician is allowed to establish staff privileges at any other hospital(s) and to refer business to any other entities (except as referrals may be restricted under an employment or services contract that complies with §411.354(d)(4)).

(2)

(i) The "geographic area served by the hospital" is the area composed of the lowest number of contiguous zip codes from which the hospital draws at least 75 percent of its inpatients. The geographic area served by the hospital may include one or more zip codes from which the hospital draws no inpatients, provided that such zip codes are entirely surrounded by zip codes in the geographic area described above from which

the hospital draws at least 75 percent of its inpatients.

(ii) With respect to a hospital that draws fewer than 75 percent of its inpatients from all of the contiguous zip codes from which it draws inpatients, the "geographic area served by the hospital" will be deemed to be the area composed of all of the contiguous zip codes from which the hospital draws its inpatients.

(iii) *Special optional rule for rural hospitals.* In the case of a hospital located in a rural area (as defined at §411.351), the "geographic area served by the hospital" may also be the area composed of the lowest number of contiguous zip codes from which the hospital draws at least 90 percent of its inpatients. If the hospital draws fewer than 90 percent of its inpatients from all of the contiguous zip codes from which it draws inpatients, the "geographic area served by the hospital" may include noncontiguous zip codes, beginning with the noncontiguous zip code in which the highest percentage of the hospital's inpatients resides, and continuing to add noncontiguous zip codes in decreasing order of percentage of inpatients.

(iv) A physician will be considered to have relocated his or her medical practice if the medical practice was located outside the geographic area served by the hospital and—

(A) The physician moves his or her medical practice at least 25 miles and into the geographic area served by the hospital; or

(B) The physician moves his medical practice into the geographic area served

by the hospital, and the physician's new medical practice derives at least 75 percent of its revenues from professional services furnished to patients (including hospital inpatients) not seen or treated by the physician at his or her prior medical practice site during the preceding 3 years, measured on an annual basis (fiscal or calendar year). For the initial "start up" year of the recruited physician's practice, the 75 percent test in the preceding sentence will be satisfied if there is a reasonable expectation that the recruited physician's medical practice for the year will derive at least 75 percent of its revenues from professional services furnished to patients not seen or treated by the physician at his or her prior medical practice site during the preceding 3 years.

(3) The recruited physician will not be subject to the relocation requirement of this paragraph, provided that he or she establishes his or her medical practice in the geographic area served by the recruiting hospital, if—

(i) He or she is a resident or physician who has been in practice 1 year or less;

(ii) He or she was employed on a full-time basis for at least 2 years immediately prior to the recruitment arrangement by one of the following (and did not maintain a private practice in addition to such full-time employment):

(A) A Federal or State bureau of prisons (or similar entity operating one or more correctional facilities) to serve a prison population;

(B) The Department of Defense or Department of Veterans Affairs to serve active or veteran military personnel and their families; or

(C) A facility of the Indian Health Service to serve patients who receive medical care exclusively through the Indian Health Service; or

(iii) The Secretary has deemed in an advisory opinion issued under section 1877(g) of the Act that the physician does not have an established medical practice that serves or could serve a significant number of patients who are or could become patients of the recruiting hospital.

(4) In the case of remuneration provided by a hospital to a physician either indirectly through payments made to another physician practice, or directly to a physician who joins a physician practice, the following additional conditions must be met

(i) The written agreement in paragraph (e)(1) is also signed by the physician practice.

(ii) Except for actual costs incurred by the physician practice in recruiting the new physician, the remuneration is passed directly through to or remains with the recruited physician.

(iii) In the case of an income guarantee of any type made by the hospital to a recruited physician who joins a physician practice, the costs allocated by the physician practice to the recruited physician do not exceed the actual additional incremental costs attributable to the recruited physician. With respect to a physician recruited to join a physician practice located in a rural area or HPSA, if the physician is recruited to replace a physician who, within the previous 12-month period, retired, relocated outside of the geographic area served by the hospital, or died, the costs allocated by the physician practice to the recruited physician do not exceed either—

(A) The actual additional incremental costs attributable to the recruited physician; or

(B) The lower of a *per capita* allocation or 20 percent of the practice's aggregate costs.

(iv) Records of the actual costs and the passed-through amounts are maintained for a period of at least 5 years and made available to the Secretary upon request.

(v) The remuneration from the hospital under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any actual or anticipated referrals by the recruited physician or the physician practice (or any physician affiliated with the physician practice) receiving the direct payments from the hospital.

(vi) The physician practice may not impose on the recruited physician practice

restrictions that unreasonably restrict the recruited physician's ability to practice medicine in the geographic area served by the hospital.

(vii) The arrangement does not violate the anti-kickback statute (section 1128B(b) of the Act), or any Federal or State law or regulation governing billing or claims submission.

(5) Recruitment of a physician by a hospital located in a rural area (as defined at §411.351) to an area outside the geographic area served by the hospital is permitted under this exception if the Secretary determines in an advisory opinion issued under section 1877(g) of the Act that the area has a demonstrated need for the recruited physician and all other requirements of this paragraph (e) are met.

(6) This paragraph (e) applies to remuneration provided by a federally qualified health center or a rural health clinic in the same manner as it applies to remuneration provided by a hospital, provided that the arrangement does not violate the anti-kickback statute (section 1128B(b) of the Act), or any Federal or State law or regulation governing billing or claims submission.

42 U.S.C. § 1994

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders,

regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

18 U.S.C. § 1589

a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—

   1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
   2) by means of serious harm or threats of serious harm to that person or another person;
   3) by means of the abuse or threatened abuse of law or legal process; or
   4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint,

   shall be punished as provided under subsection (d).

b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in

the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).

c) In this section
   1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
   2) The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

d) Whoever violates this section shall be fined under this title, imprisoned not more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnaping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

9 U.S.C. § 1

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished

vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

9 U.S.C. § 2

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C.A. § 3

§ 3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 4

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall

make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

9 U.S.C.A. § 10

§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--

(1) where the award was procured by corruption, fraud, or undue means;
(2) where there was evident partiality or corruption in the arbitrators, or either of them;
(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

Judgments sought to be Reviewed if Different from Order

[DOC 130 or R9-130]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA AUGUSTA DIVISION

SEEMA L. MISHRA, M.D., on her own behalf, individually, and on behalf of her patients, both private pay and those receiving Medicaid or Medicare from the federal government or financial assistance for healthcare from the State of South Carolina,	*	
Plaintiff,	*	
v.	*	CV 105-101
HCA INC., privately and under color of law; DOCTORS HOSPITALOF AUGUSTA, LLC d/b/a DOCOTRS HOSPITAL OF AUGUSTA, and its parent privately and under color of law; JOHN DOE, OR ANY AGENT OF HCA INC., individually and under color of law; THE CENTER FOR PRIMARYCARE; and JIM LARSON,	*	
Defendants.	*	

JUDGMENT IN A CIVIL CASE

IT IS **ORDERED AND ADJUDGED** that in accordance with the Order entered on April 17, 2009, **JUDGMENT IS HEREBY ENTERED** on behalf of the HCA Defendants as follows:

1. Principal under the Loan Agreement of $88,691.81;
2. Pre-Award Interest under the Loan Agreement totaling $16,283.68 as of the date of the arbitrator's award, April 16, 2008 calculated at 6.25% from January 1, 2005 through April 16, 2008; **[end 1 of 2]**

JUDGEMENT IN CIVIL CASE CONT.
CV105-101

3. Pre-Judgment Interest under the Loan Agreement totaling $5,225.36 as of the date of the Order confirming the award, March 26, 2009, calculated from April 17, 2008 through March 26, 2009.
4. Principal under the Marketing Expense Reimbursement Addendum of $3,857.17;
5. Principal under the Sign-On Bonus Addendum of $15,416.67;
6. Pre-Award Interest under the Marketing Expense Reimbursement Addendum and the Sign-On Bonus Addendum totaling $3,966.40, as of the date of the arbitration award, April 16, 2008, calculated at 7.00% from January 1, 2005, through April 16, 2008;
7. Pre-Judgment Interest under the Marketing Expense Reimbursement

Addendum and the Sign-On Bonus Addendum totaling $1,272.80, as of the date of the Order confirming the award, March 26, 2009, calculated from April 17, 2008 through March 26, 2009; and

8. Attorney's fees owing pursuant to the express terms of the contract and O.C.G.A. § 13-1-11 in the amount of $12,846.57.

4-17-09
DATE

Scott L. Poff
CLERK

/s/
(BY) Deputy Clerk

[end 2 of 2]

Materials Essential to Understanding of Petition

[DOC 3 or R1-3 p.1 of 21]
IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

SEEMA L. MISHRA, M.D., on her own behalf, individually, and on behalf of her patients, both private pay and those receiving Medicaid or Medicare from the federal government or financial assistance for healthcare from the State of South Carolina,	)	
Plaintiff,	)	
v.	)	CV 105-101
HCA INC., privately and under color of law; DOCTORS HOSPITALOF AUGUSTA, LLC d/b/aDOCOTRS HOSPITAL OF AUGUSTA, and its parent, THE CORPORATION OF AMERICA,	)	
THE CENTER FOR PRIMARYCARE, and	)	
JIM LARSON,	)	
Defendants.	)	

FILED
U.S. DISTRICT COURT
AUGUSTA DIV
2005 JUL -8 AM 10:18
CLERK: /s/J.A.
SO. DIST. OF GA.

DECLARATION OF SEEMA L. MISHRA, M.D.

Personally appeared Seema L. Mishra, M.D., who with knowledge ofthe penalties for perjury states that the following facts are true of her own personal knowledge:

1. That my name is Seema L. Mishra, M.D., that my signature is below, and that I am adult competent to make this statement.

2. That I consider myself a resident of the State of South Carolina, in that I live at St. Julian Place, North Augusta, South Carolina, have South Carolina license plates and paid South Carolina **[end 1 of 9]** State taxes.

3. That Paul Fischer sent me the letter dated October 6, 2003, and he listed the documents he enclosed with the letter.

4. That attached hereto at Tab 1, is a copy of some of the documents he sent, including an Employment Contract for 2/1/04 through 1/31/05, and an Employment Contract for 2/1/05 through 1/31/06, and a Center for Primary Care, P.C. 2003 Physician Compensation Plan.

5. That the documents Dr. Fischer sent to me had not been signed by me yet.

6. That I signed and dated the Employment Contract for 2/1/04 through 1/31/05 on October 14, 2003 and then sent it back to him.

7. That I signed the Employment Contract for 2/1/05 through 1/31/06, but did not date it, and then sent it back to him at the same time.

8. In all of the oral representations from the agents for the Center for Primary Care, including but not limited to, Paul Fischer, M.D. and Jim Larson and any of the physicians in the practice, no one told me that I would have to enter into a contract or contracts with Doctor's hospital as a part of the offer they made and which I verbally accepted to become an employee of CPC and work as a physician in an office in North Augusta, South Carolina, for a monthly salary for two years.

9. That during the oral negotiations with agents of CPC no one ever told me that if I left the practice in a certain time that I would have to repay anything.

10. That CPC offered me a position for two years as a physician as an employee of CPC, in a practice of CPC that was opening in North Augusta, South Carolina.

11. That the documents received around October 2003 in Tab 1 were the only documents I received in conjunction with the October 6, 2003 letter, in that I was not given any of the documents **[2 of 9 end]**

referred to in paragraph 10 of the Employment Contract, found at Tab 1.

12. That at Tab 2 are documents which I signed at Doctors Hospital in Augusta, after being taken there by Jim Larson, the Chief Operating Officer of CPC.

13. I had traveled from North Carolina to look at houses and because Larson said there some documents I needed to sign and that we needed to meet.

14. That Jim Larson met me at Doctor's Hospital that they had some paperwork that needed to be signed.

15. Mr. Larson told me that Doctor's Hospital was going to help fund the practice in North Augusta.

16. That Jim Larson took me into the doctor's lounge at Doctor's Hospital and one or two people from Doctor's Hospital were present and I think it was either Terry Gunn or Shane George, and perhaps a woman, Cathy Scott.

17. That Jim Larson told me that they, who I assumed to be CPC, had checked the paperwork and that it was all OK and in my best interest to sign.

18. That Larson said this was about the money the Doctor's Hospital was going to give CPC to fund the North Augusta office.

19. That Larson said that these papers were just like the papers that everyone in the practice had to sign, and that they all had done it before.

20. That we did not go over the documents and I was shown where to sign.

21. That I had already signed the Employment Contract and had taken steps to move.

22. That attached hereto in Tab 2 are the following documents I signed on November 16, 2003:

1. Recruiting Agreement, signed by me on November 6, 2003, and Terry Gunn **[end 3 of 9]** the CEO of Doctors Hospital, who signed it on October 8, 2003.
2. Promissory Note [Exhibit A] signed by me on November 6, 2003.
3. Recruiting Agreement Addendum 1, signed by me on November 6, 2003, and Terry Gunn the CEO of Doctors Hospital, who signed it on October 8, 2003.
4. Recruiting Agreement Addendum 2, signed by me on November 6, 2003, and Terry Gunn the CEO of Doctors Hospital, who signed it on October 8, 2003.
5. Recruiting Agreement Addendum 3, signed by me on November 6, 2003, and Terry Gunn the CEO of Doctors Hospital, who signed it on October 8, 2003.
6. Agreement as to Medical Practice's Role in Recruitment, signed by me on November 6, 2003, Paul Fischer 24, 2003 and Terry Gunn the CEO of Doctors Hospital, who signed it on October 8, 2003, and Paul Fischer of CPC on November 24, 2003.
7. Physician Expense Worksheet, signed by me on November 6, 2003, and Paul Fischer on November 24, 2003.

23. That within the Recruiting Agreement, number 1 immediately above, is a clause about mandatory arbitration, paragraph 13, that no party to the agreement initialed at the time of signing.

24. That I began working at the CPC office in North Augusta, South Carolina, in about January 2004 and received monthly pay from CPC.

25. That often when I was working at the North Augusta office and someone from the main CPC office would come over with paperwork to be signed, the person would interrupt me in between patients and direct me to sign paperwork for insurance and other matters.

26. That Sometimes it was Larson, Tabby Austin, a person from CPC human resources, or a secretary. **[end 4 of 9]**

27. That attached hereto at Tab 3 is a document entitled Recruiting Agreement Amendment that was signed by me on July 26, 2004, Bob Clark of CPC on July 26, 2004, and Terry Gunn, CEO of Doctor's Hospital on July 28, 2004.

28. That Jim Larson brought the document at Tab 3, over to th(sic) North Augusta office and interrupted me between patients, told me that I had to sign it, "to keep things legal with Doctor's Hospital."

29. That I did not have a chance to read it at that time.

30. That when I started in North Augusta Larson said that I had to use a the computer system to log in my office notes about my interactions with the patients I saw.

31. That I told him that I would try, but that I could do it by hand writing or dictation.

32. That when I was offered the position I was not told that I had to do my office notes in a certain manner or on the computer.

33. If I had been told or asked before I accepted the job that I had to do my office notes on the computer, I would have said that I do not type and that I am not computer literate.

34. That there was nothing in the contracts about how I had to do office notes

35. That I consider it a matter of professional discretion as to how a doctor does his or her office notes.

36. That all of the other physicians at CPC are allowed to do office notes in the manner they choose and are accustomed to.

37. Doctors D. Kennedy, P. Kennedy, Deshpande and Tome°, do notes by hand, others use voice dictation, others use handheld dictation and some use the computer.

38. The Evans office uses all three systems. **[end 5 of 9]**

39. That in about August 2004, Jim Larson and Bob Clark put me on notice that I had to keep my office notes current by computer or my pay would be held up until they were current.

40. That I begged to be able to write them, because I have beautiful handwriting and I have never had trouble keeping current with office notes when I hand write my notes.

41. After being terminated from CPC and being employed at Doctor's Care in Aiken I see more patients at Doctor's Care than I saw at CPC and my hand written notes are always current.

42. That I had about 20-30 patients a day at CPC and about 40-60 at Doctor's Care, and my notes are always current.

43. That I begged Larson to be allowed to use dictation.

44 That Jim Larson persisted and made me use the computer, even though I told him how difficult it was for me.

45. That I asked for time to catch up the office notes, but Larson would not give it.

46. Other physicians can block off time without getting approval from Larson.

47. Dr. Barefield and Dr. Rassekh in the South Augusta office, who used the computer, had to block of time to catch up.

48. In about September 2004 CPC hired a male to work in the North August Office.

49. The male was allowed to do office notes in the manner of his professional discretion.

50. That in December I fell behind in doing my office notes by computer.

51. That Bob Clark and Jim Larson terminated me and said it was because I fell behind with my notes.

52. That I was officially terminated from CPC on December 17, 2004.

53. That when I was terminated by Clark and Larson, I asked Clark what about the financial **[end 6 of 9]** agreements with Doctor's Hospital and he said there is nothing you have to worry about.

54. That I was able to catch the notes back up within twelve hours by hand writing the notes.

55. That the bulk of my patients while at CPC were from Aiken County and other parts of South Carolina.

56. That I looked for and found a position Doctor's Care in Aiken County.

57. That I am an employee of Doctor's Care and that no one there has directed that I have to do office notes in a certain way.

58. On January 10, 2005 I contacted Shane George of Doctor's Hospital and informed him that I was no longer with CPC.

59. He said that their attorneys would contact me by the end of the week.

60. The end of the week came and no attorneys contacted me.

61. That Doctor's Hospital did not tender any money for me to try to practice back in North Augusta, South Carolina, where I practiced for all material portions covered in the written documents.

62. That on February 1, 2005, I accepted a position in Aiken County Doctor's Care and I began working on February 6, 2005.

63. On February 9, 2005, Doctor's Hospital's lawyer sent me a letter alleging that I had "ceased practicing in Augusta."

64. That I had never practiced in Augusta.

65. That I had been wrongfully terminated by CPC and Jim Larson in breach of the Employment Agreement as I had not committed any gross misconduct.

66. That I wrote back February 16 stating my position. **[end 7 of 9]**

67. That in April 2005 I received a call from the Physician Recruiting Director for Doctor's Hospital, and she asked me if I wanted to go to work in some

place south or west of Augusta that was about a thirty or forty five minute drive.

68. That I told her no that I was working in Aiken.

69. That she accused me of breaching the contract, and that if I took this position it would cure my breach of the contract.

70. That I told her I was not the one who breached the contract.

71. That I told her that if Doctor's Hospital would set me up in a practice in North Augusta I would go.

72. That she would not do that, and again accused me of breaching by being out of the service area, because she had "run the zip codes."

73. I explained to her again that I was not the one who had breached.

74. I explained that before I was fired I had been practising (sic) in Aiken County, South Carolina and that I was still practising (sic) in Aiken County, South Carolina.

75. That shortly thereafter I received a letter from an attorney representing Doctor's Hospital claiming that I owed them over $80,000 for breaching the Recruiting Agreement because I had to be practicing in Augusta or the Hospital's "service area."

76. That I did not want to have to come to Augusta, Georgia to practice.

77. That in the Employment Agreement I was an employee of CPC and CPC treated me like I I (sic) could be fired for any reason.

78. That Doctor's Hospital is treating me like I received a loan from them, and voluntarily abandoned the practice in North Augusta, like I had received all of the money where CPC paid my **[end 8 of 9]**salary but kept or used the money to build the CPC practice that is still associated with Doctor's Hosptial and now has two physicians.

79. Even though I gave Doctor's Hospital opportunities to follow through with establishing a practice for me in North Augusta, they have refused, and they are trying to extort money from me or get me to relocate my practice to Augusta, Georgia.

80. If they can make me move to Augusta I will be one more physician referring patients to them and not referring patients to other hospitals.

81. CPC and Doctor's Hospital know or should know that I had good patient following that was on target for CPC before I was wrongfully terminated, and they want me to move my practice to bring my patient following from South Carolina.

82. Doctor's Hospital wants to interfere with my patient's right to free commerce among the states and to chose where they have medical care, and to interfere with my patient's right to choose his or her physician.

83. I was under contracts that were inherently conflicting and I was unable to serve one master,

CPC, and still be able to comply with the demands of Doctor's Hospital, especially after Larson and CPC wrongfully breached the Employment Agreement.

84. That I contacted Mr. Batson in April.

Executed this 7th day of July, 2005.

/s/ Seems L. Mishra, M.D.
Seema L. Mishra, M.D.

Prepared by:
John P. Batson
P.O. Box 3248
Augusta, Georgia 30914-3248
706-737-4040
[end 9 of 9]

[DOC 3 or R1-3 p.11 of 21]

STATE OF GEORGIA
RICHMOND COUNTY

EMPLOYMENT CONTRACT

THIS AGREEMENT, made this 14th day of October 2003, between CENTER FOR PRIMARY CARE, P.C., hereinafter called "CPC", a Georgia Professional Corporation, with its principal offices in. Richmond County, Georgia; and Seema L. Mishra. M.D., hereinafter called "DOCTOR";

WHEREAS, CPC is a Georgia Professional Corporation authorized to practice medicine in Georgia and South Carolina through individuals licensed to practice medicine in Georgia and South Carolina, and wishes to employ the Doctor to render services for it; and

WHEREAS, the Doctor will be a licensed physician in the States of Georgia and South Carolina by the effective date of this Agreement, and is willing to perform services for CPC, all in accordance with the following terms, conditions, and provisions; and

WHEREAS, this contract is contingent upon all parties signing additional separate agreements described in Paragraph 10 of this contract among Doctors Hospital of Augusta, Inc., Center for Primary Care, P.C., and the Doctor;

NOW, THEREFORE, it is agreed that:

1. TERM OF EMPLOYMENT. This Agreement shall be for a term of one (1) year commencing on the First (1st) day of February , 2004 and ending on the Thirty-first 31st day of January , 2005.

2. RESPONSIBILITIES OF CPC. CPC shall provide all of the administration of the group practice including day-to-day operations, employment supervision, billing supervision, maintenance of bank accounts, entering into contracts on behalf of the Corporation, preparing work and on-call schedules for physicians, and maintaining facilities and equipment which are appropriate for the Doctor's performance of professional duties consistent with the appropriate standard of care under this Agreement.

As part of the services provided by CPC, it shall bill and collect all of the Doctor's professional fees and shall maintain adequate books and records pertaining to the individual Doctor's medical practice in accordance with generally accepted accounting principles. CPC shall provide the Doctor with sufficient financial data reasonably necessary to enable the preparation of annual income statements and tax returns, and access to the accounting records related to their individual billing, collections, and overhead.

Non-Shareholder Physician Employment Contract 1 (1 May 2003)
Doctor Initials /s/SLM MD CPC Initials /s/PF
[end 1 of 6]

3. DOCTOR'S RESPONSIBILITIES. The Doctor agrees to provide forty (40) hours per week of in-office time and a fair share of the practice's inpatient and on-call responsibilities as scheduled by CPC.

The Doctor agrees that all medical services performed by the Doctor shall be for CPC. The Doctor shall conduct his practice in accordance with high professional and clinical standards. The Doctor

shall, during the term hereof, also improve his or her reputation and standing through continuing professional development and education.

The Doctor agrees in practicing medicine hereunder for CPC, to adhere to and carry out diligently all of the policies and protocols adopted by CPC.

The Doctor acknowledges that only CPC is entitled to claim or receive any fees or charges arising on account of the Doctor's services so long as this Agreement is in force.

The Doctor shall become, within sixty (60) days of joining CPC and shall continue to be during the term of this agreement, a provisional active or active member of the medical staff of all hospitals designated by CPC, shall apply to become a member of and pay any appropriate fees and dues to all Physician Hospital Organizations (PHO) designated by CPC, shall be licensed to practice medicine in the States of Georgia and South Carolina, shall be board certified or eligible, and shall be a participating Medicaid/Medicare provider.

Furthermore, the Doctor, as an inducement for the signing of this contract, covenants that he/she has never had his/her staff privileges or license revoked or suspended at any time, nor has he/she been convicted of a crime involving moral turpitude, nor has he/she been suspended from being a Medicare Provider.

The Doctor shall be and remain insurable for purposes of professional malpractice insurance. A list of claims or law suits, if any, against the Doctor during the previous five (5) years shall have been provided to CPC prior to the execution of this contract, and the Doctor covenants that he has complied with this provision.

The Doctor agrees that he/she shall not at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any person, firm, or corporation, in any manner whatsoever, any information concerning the business of CPC, its manner of operation, its plans, processes, or other data without regard to whether of any such matters will be deemed confidential, material or important. However, this Agreement shall not prevent the Doctor from discussing his/her personal participation in these plans and processes and business of CPC with his spouse or anyone that he/she has a fiduciary relationship with, in order to consult with them in making decisions in regard to his/her participation in the business plans of CPC. The parties stipulate that, as between them, the information referred to above is material, confidential and important and any breach of the terms of this section shall be a material breach of this Agreement, and that CPC is entitled to seek any type of injunctive relief that it may deem necessary to enforce this provision, which relief shall not preclude CPC from any other remedies that it may seek in law and/or equity.

Non-Shareholder Physician Employment Contract 1 (1 May 2003)
Doctor Initials /s/SLM MD CPC Initials /s/PF
[end 2 of 6]

4. PATIENT RECORDS. All patient records generated by the Doctor shall be held confidential by both CPC and the Doctor as required by State law and applicable standards, and upon termination hereof shall be retained by CPC until such time that a patient requests copies of the same as provided by State law.

5. COMPENSATION. As compensation for his/her services rendered for CPC, the Doctor shall be guaranteed $11,000 per month gross salary. Additional compensation in the form of a bonus will be paid to the Doctor based on the Doctor's individual monthly receipts over $11,000 plus overhead expenses. This will be determined and paid in accordance with the Corporation's bonus formula in effect at the time.

The Doctor shall be entitled to the fringe benefits provided by CPC to include, but not limited to, health insurance, dental insurance, disability insurance, professional licensing, fees, &es and journals, malpractice insurance (a $1,000,000/$3,000,000 claims made policy with tail coverage), and upon attaining eligibility for participation in the company's retirement plan, a five percent (5%) company match of any monthly contribution to the company's retirement plan, up to Five Hundred Dollars ($500) per month or Six Thousand ($6,000) Dollars per year.

In addition to the fringe benefits and salary outlined above, the Doctor shall be entitled to two (2) weeks paid vacation per year, one (1) week paid continuing medical education per year with up to $2,000 of CME expenses per year, and five (5) days sick leave per year and the following seven (7) holidays: New Years Day, July 4, Labor Day, Thanksgiving, Thanksgiving Friday, Christmas Eve Day and Christmas. The vacation and other leave shall be taken on reasonable prior notice *and* in such a manner as not to interfere with the proper operation of the practice, and the timing of the vacation shall be scheduled in a reasonable manner by both parties.

The Doctor shall not be entitled to receive an additional compensation from CPC on account of his/her failure to use all of the vacation, sick or holiday time but shall be entitled to accumulate up to two (2) weeks of unused vacation time from one contract year to the next.

6. PROFESSIONAL TRAINING. The Doctor shall perform his/her duties under this Agreement in accordance with such standards of professional ethics and practice as may from time to time be applicable during the term of his/her employment hereinafter.

The Doctor may be either suspended or terminated by CPC if he/she has a suspension of his/her license, hospital privileges, or if he/she is suspended as a provider of services to Medicare patients. In addition, CPC may terminate this Agreement if the Doctor conducts any act of gross negligence or willful misconduct, is convicted of a crime of moral turpitude, becomes uninsurable for malpractice coverage, or loses his/her license to practice medicine on any grounds.

7. INDEMNITY AND MALPRACTICE INSURANCE. The Doctor shall hold harmless and indemnify CPC, its successors and assigns, from and against any and all liabilities, costs, damages, expenses, and reasonable attorney's fees resulting from or attributable to the negligence or willful misconduct of the Doctor; provided, however, that to

the extent that any such liabilities, costs, damages, expenses, and reasonable attorney's fees are recoverable by CPC through insurance purchased by CPC, the Doctor shall not be required to hold harmless and indemnify CPC, or insurer, for the same, but Doctor shall be subject to such applicable subrogation rights afforded to any insurer.

CPC shall hold harmless and indemnify the Doctor, his/her successors and assigns,, from and against any and all liabilities, costs, damages, expenses, and reasonable attorney's fees resulting from or attributable to the negligence or willful misconduct of CPC or its agents or employees; provided, however, that to the extent that any such liabilities, costs, damages, expenses, and reasonable attorney's fees' are recoverable by Doctor tint insurance purchased by the Doctor, CPC shall not be required to hold harmless and indemnify the Doctor, or insurer, for the same, but CPC shall *be* subject to such applicable subrogation rights afforded to any insurer.

8. LIQUIDATED DAMAGES UPON VOLUNTARY SEPARATION. Should the Doctor, of his/her own choosing, a) not renew this contract, orb) terminate prior to the end of this contract, he/she shall be obligated to repay the costs of practice development incurred by CPC (beyond any hospital guarantee and other monies provided by any hospital) not to exceed a maximum amount of Net Accounts Receivable plus $35,000. This amount shall be the cumulative amount shown as "CPC practice development cost" on the monthly CPC financial statements. The Net Collectable Accounts Receivable generated by the Doctor shall be applied toward this debt. If the Net. Collectable Accounts Receivable is

insufficient to cover the "CPC practice development cost", the balance (up to $35,000) with interest at rate of prime plus one percent (1%) will be payable to CPC by the Doctor at the time of beginning his/her practice with another group, institution or as a private solo practice; or within one (1) year if the Doctor does not continue to practice medicine.

Should the Doctor's employment contract not be renewed at the election of CPC, or if the Doctor is denied shareholder status, then the repayment provisions of this paragraph shall not apply.
Both parties agree the terms of this paragraph are reasonable.

9. TERMINATION COMPENSATION. Upon the termination of the Doctor's employment hereinafter for any reason whatsoever, CPC shall pay his/her salary and bonus to'him/her, or in the event of his/her death or mental incompetency, to his/her personal representative, for services rendered through the end of the month of termination as provided above.

10. INVOLUNTARY SEPARATION. The parties acknowledge the existence of separate agreements between Doctor's Hospital of Augusta, Inc. and the Doctor which guarantee the Doctor certain minimum gross monthly cash receipts for a period not to exceed twelve (12) months. These agreements consist of (1) Recruiting Agreement (HCA-462 Rev 7/2002), (2) Recruiting Agreement Addendum - Monthly

Physician Assistance Payment with Repayment Forgiveness (HCA-462B Rev 7/2002), (3) Promissory Note [Exhibit A], (4) Recruiting Agreement Addendum - Marketing Expense Reimbursement (HCA-462D Rev 4/2002), (5) Recruiting Agreement Addendum -Sign-On Bonus (HCA-462M Rev 4/2002), and (6) Recruiting Agreement Addendum - Recruiting Into Existing Medical Practice (HCA-462J Rev 7/2002). Pursuant to these agreements, any such monies are to be paid directly to CPC for use in supplementing the Doctor's collections and as payment to the Doctor of the salary, benefits, practice and marketing expenses due hereunder. Such guarantees are a debt of the physician to Doctor's Hospital of Augusta, Inc. and will be forgiven and canceled one thirty-sixth (1/36th) per month after the end of the Guarantee Period as described in paragraph 6 of the Recruiting Agreement Addendum - Monthly Physician Assistance Payment with Repayment Forgiveness (HCA-462B Rev 7/2002) (item 2 above). Should the Doctor cease practicing family medicine in the Community prior to the end of the forty-eighth (48th) month of starting his practice, then the Doctor shall be obligated to repay the remaining un-forgiver portion of the Gross Cash Receipts guarantee and other start-up funds provided by the hospital.

11. ASSIGNMENT. This Agreement is binding upon and shall inure to the benefit of the parties hereto and neither party may assign its rights hereunder except with the consent of the other. The performance of any provision hereof may be waived only by an agreement in writing. No waiver of any breach shall constitute a waiver of a repeat or continuing breach.

12. NOTICES. Any notice required hereinafter shall be hand delivered or sent by certified U.S. mail, return receipt requested, postage prepaid, to the addresses as provided by the parties hereto. Notices shall be deemed given when received.

13. CONSTRUCTION. This Agreement shall be interpreted and construed in accordance with the laws of the State of Georgia. The titles of the Sections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms and provisions hereof.

14. SEVERABILITY. Each provision of this Agreement shall be considered separate and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or

future law, such invalidity, unenforceability, or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable, and legal.

15. PRONOUNS. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

IN WITNESS WHEREOF, this Employment Contract has been executed as of the date set forth above.

/s/ Paul M. Fischer, M.D.
Paul M. Fischer, M.D.
Chief Executive Officer
Center for Primary Care, PC

/s/ Seema L. Mishra, M.D.
Seema L. Mishra, M.D.
Doctor

/s/James C. Larson
Witness

Non-Shareholder Physician Employment Contract 1
(1 May 2003)
[end 6 of 6]

[DOC 3.or R1-3 p.17 of 21]

STATE OF GEORGIA
RICHMOND COUNTY

EMPLOYMENT CONTRACT

THIS AGREEMENT, made this ____ day of _____, 2003, between CENTER FOR PRIMARY CARE, P.C., hereinafter called "CPC", a Georgia Professional Corporation, with its principal offices in Richmond County, Georgia; and Seema L. Mishra, M.D., hereinafter called "DOCTOR";

WHEREAS, CPC is a Georgia Professional Corporation authorized to practice medicine in Georgia and South Carolina through individuals licensed to practice medicine in Georgia and South Carolina, and wishes to employ the Doctor to render services for it; and

WHEREAS, the Doctor will be a licensed physician in the States of Georgia and South Carolina by the effective date of this Agreement, and is willing to perform services for CPC, all in accordance with the following terms, conditions, and provisions; and

WHEREAS, this contract is contingent upon all parties signing additional separate agreements described in Paragraph 11 of this contract among Doctors Hospital of Augusta, Inc., Center for Primary Care, P.C., and the Doctor;

NOW, THEREFORE, it is agreed that:

1. TERM OF EMPLOYMENT. This Agreement shall be for a term of one (1) year commencing on the First (1st) day of February , 2005 and ending on the 31st day of January , 2006.

2. RESPONSIBILITIES OF CPC. CPC shall provide all of the administration of the group practice including day-to-day operations, employment supervision, billing supervision, maintenance of bank accounts, entering into contracts on behalf of the Corporation, preparing work and on-call schedules for physicians, and maintaining facilities and equipment which are appropriate for the Doctor's performance of professional duties consistent with the appropriate standard of care under this Agreement.

As part of the services provided by CPC, it shall bill and collect all of the Doctor's professional fees and shall maintain adequate books and records pertaining to the individual Doctor's medical practice in accordance with generally accepted accounting principles. CPC shall provide the Doctor with sufficient financial data reasonably necessary to enable the preparation of annual income statements and tax returns, and access to the accounting records related to their individual billing, collections, and overhead.

Non-Shareholder Physician Employment Contract 2
(1 May 2003)
Doctor Initials /s/SLM MD CPC Initials /s/PF
[end 1 of 7]

3. DOCTOR'S RESPONSIBILITIES. The Doctor agrees to provide forty (40) hours per week of in-office time and a fair share of the practice's inpatient and on-call responsibilities as scheduled by CPC.

The Doctor agrees that all medical services performed by the Doctor shall be for CPC., The Doctor shall conduct his practice in accordance with

high professional and clinical standards. The Doctor shall, during the term hereof, also improve his or her reputation and standing through continuing professional development and education.

The Doctor agrees in practicing medicine hereunder for CPC, to adhere to and carry out diligently all of the policies and protocols adopted by CPC.

The Doctor acknowledges that only CPC is entitled to claim or receive any fees or charges arising on account of the Doctor's services so long as this Agreement is in force.

The Doctor shall become, within sixty (60) days of joining CPC and shall continue to be during the term of this agreement, a provisional active or active member of the medical staff of all hospitals designated by CPC, shall apply to become a member of and pay any appropriate fees and dues to all Physician Hospital Organizations (PHO) designated by CPC, shall be licensed to practice medicine in the States of Georgia and South Carolina, shall be board certified or eligible, and shall be a participating Medicaid/Medicare provider.

Furthermore, the Doctor, as an inducement for the signing of this contract, 'covenants that he/she has never had his/her staff privileges or license revoked or suspended at any time, nor has he/she been convicted of a crime involving moral turpitude, nor has he/she been suspended from being a Medicare Provider.

The Doctor shall be and remain insurable for purposes of professional malpractice insurance. A list of claims or law suits, if any, against the Doctor during the previous five (5) years shall have been provided to CPC prior to the execution of this

contract, and the Doctor covenants that he/she has complied with this provision.

The Doctor agrees that he/she shall not at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any person, firm, or corporation, in any manner whatsoever, any information concerning the business of CPC, its manner of operation, its plans, processes, or other data without regard to whether of any such matters will be deemed confidential, material or important. However, this Agreement shall not prevent the Doctor from discussing his/her personal participation in these plans and processes and business of CPC with his spouse or anyone that he/she has a fiduciary relationship with, in order to consult with them in making decisions in regard to his/her participation in the business plans of CPC. The parties stipulate that, as between them, the information referred to above is material, confidential and important and any breach of the terms of this section shall be a material breach of this Agreement, and that CPC is entitled to seek any type of injunctive relief that it may deem necessary to enforce this provision, which relief shall not preclude CPC from any other remedies that it may seek in law and/or equity.

Non-Shareholder Physician Employment Contract 2 (1 May 2003)
Doctor Initials /s/SLM MD CPC Initials /s/PF
[end 2 of 7]

4. PATIENT RECORDS. All patient records generated by the Doctor shall be held confidential by both CPC and the Doctor as required by State law and applicable standard., and upon termination hereof shall be retained by CPC until such time that

a patient requests copies of the same as provided by State law.

5. COMPENSATION. As compensation for his/her services rendered for CPC, the Doctor shall *be* guaranteed $11,000 per month income during the first six (6) months of this contract. During the last six (6) months of this contract, the Doctor's gross salary shall be calculated in the same manner as the Shareholder physicians, i.e gross pay shall be the amount remaining up to $11,000 after, the physician's expenses are deducted from the physician's total receipts. Additional compensation in the form of a bonus will be paid to the Doctor based on the Doctor's individual monthly receipts over $11,000 plus overhead expenses. This will be determined and paid in Accordance with the Corporation's bonus computation formula in effect at the time.

The Doctor shall be entitled to the fringe benefits provided by CPC to include, but not limited to, health insurance, dental insurance, disability insurance, professional licensing, fees, dues and journals, malpractice insurance (a $1,000,000/$3,000,000 claims made policy with tail coverage), and upon attaining eligibility for participation in the company's retirement plan, a five percent (5%) company match of any monthly contribution to the company's retirement plan, up to Five Hundred Dollars ($500) per month or Six Thousand ($6,000) Dollars per year.

In addition to the fringe benefits and salary outlined above, the Doctor shall be entitled to two (2) weeks paid vacation per year, one (1) week paid continuing medical education per year with up to $2,000 of CME expenses per year, five (5) days sick

leave per year and the following seven (7) holidays: New Years Day, July 4, Labor Day, Thanksgiving, Thanksgiving Friday, Christmas Eve Day and Christmas. The vacation and other leave shall be taken on reasonable prior notice and in such a manner as not to interfere with the proper operation of the practice, and the timing of the vacation shall be scheduled in a reasonable manner by both parties.

The Doctor shall not be entitled to receive an additional compensation from CPC on account of his/her failure to use all of the vacation, sick or holiday time but shall be entitled to accumulate up to two (2) weeks of unused vacation time from one contract year to the next.

6. PROFESSIONAL TRAINING. The Doctor shall perform his/her duties under this Agreement in accordance with such standards of professional ethics and practice as may from time to time be applicable during the term of his/her employment hereinafter.

The Doctor may be either suspended or terminated by CPC if he/she has a suspension of his/her license,

hospital privileges, or if he/she is suspended as a provider of services to Medicare patients. In addition, CPC may terminate this Agreement if the Doctor conducts any act of gross negligence or willful misconduct, is convicted of a crime of moral

turpitude, becomes uninsurable for malpractice coverage, or loses his/her license to practice medicine on any grounds.

7. INDEMNITY AND MALPRACTICE INSURANCE. The Doctor shall hold harmless and indemnify CPC, its successors and assigns, from and against any and all liabilities, costs, damages, expenses, and reasonable attorney's fees resulting from or attributable to the negligence or willful misconduct of the Doctor; provided, however, that to the extent that any such liabilities, costs, damages, expenses, and reasonable attorney's fees are recoverable by CPC through insurance purchased by CPC, the Doctor shall not *be* required to hold harmless and indemnify CPC, or insurer, for the same, but Doctor shall be subject to such applicable subrogation rights afforded to any insurer.

CPC shall hold harmless and indemnify the Doctor, his/her successors and assigns, from and against any and all liabilities, costs, damages, expenses, and reasonable attorney's fees resulting from or attributable to the negligence or willful misconduct of CPC or its agents or employees; provided, however, that to the extent that any such liabilities, costs, damages, expenses, and reasonable attorney's fees are recoverable by Doctor thru insurance purchased by the Doctor, CPC shall not be required to hold harmless and indemnify the Doctor, or insurer, for the same, but CPC shall be subject to such applicable subrogation rights afforded to any insurer.

8. LIQUIDATED DAMAGES UPON VOLUNTARY SEPARATION. Should the Doctor, of his/her own choosing, a) terminate prior to the end of

this contract, or b) not accept an offer of continued employment as a Shareholder of the Corporation, he/she shall be obligated to repay the costs of practice development incurred by CPC (beyond any hospital guarantee and other monies provided by any hospital) not to exceed a maximum amount of Net Accounts Receivable plus $35,000. This amount shall be the cumulative amount shown as "CPC practice development cost" on the monthly CPC financial statements. The Net Collectable Accounts Receivable generated by the Doctor shall be applied toward this debt. If the Net Collectable Accounts Receivable is insufficient to cover the "CPC practice development cost", the balance (up to $35,000) with interest at rate of prime plus one percent (1%) will be payable to CPC by the Doctor at the time of beginning his/her practice with another group, institution or as a private solo practice; or within one (1) year if the Doctor does not continue to practice medicine.

Should the Doctor's employment contract not be renewed at the election of CPC, or if the Doctor is denied shareholder status, then the repayment provisions of this paragraph shall not apply.

Both parties agree the terms of this paragraph are reasonable.

Non-Shareholder Physician Employment Contract 2 (1 May 2003)
Doctor Initials /s/SLM MD CPC Initials /s/PF
[end 4 of 7]

9. TERMINATION COMPENSATION. Upon the termination of the Doctor's employment hereinafter for any reason whatsoever, CPC shall pay his/her salary and bonus to him/her, or in the event of

his/her death or mental incompetency, to his/her personal representative, for services rendered through the end of the month of termination as provided above.

10. RIGHT TQ PURCHASE STOCK OF CORPORATION. Provided that the Doctor is still employed by CPC twelve (12) months from the beginning date of this Employment Contract, he/she shall, subject to the approval of all of the current shareholders of CPC, have the right to purchase from CPC, an amount of CPC corporate stock equal in number to the greatest amount then held by any single CPC shareholder, but in no event less than 250 shares. The purchase price shall be S250.00 plus fifty percent (50%) of the practice development costs incurred by the Corporation between the end of any cash flow guarantee support from any hospital and attaining Shareholder status with a minimum purchase price of $ 35,250. This offer shall be made at approximately the sixth (6[4]) month of employment under this contract, to be effective at the end of the twelfth (I 2'[1]) month of employment under this contract. The Doctor's right to purchase stock as herein provided shall be contingent upon the Doctor's continued employment with CPC. The Doctor shall have no right to purchase any stock at any time following termination of his/her employment with CPC. At the time he/she becomes a shareholder in CPC, new contracts shall be executed between CPC and the Doctor outlining the rights and obligations between the Shareholders and CPC.

11. INVOLUNTARY SEPARATION. INVOLUNTARY SEPARATION. The parties acknowledge the existence of separate agreements

between Doctor's Hospital of Augusta, Inc. and the Doctor which guarantee the Doctor certain minimum gross monthly cash receipts for a period not to exceed twelve (12) months. These agreements consist of (1) Recruiting Agreement (HCA-462 Rev 7/2002), (2) Recruiting Agreement Addendum - Monthly Physician Assistance Payment with Repayment Forgiveness (HCA-462B Rev 7/2002), (3) Promissory Note [Exhibit A], (4) Recruiting Agreement Addendum - Marketing Expense Reimbursement (HCA-462D Rev 4/2002), (5) Recruiting Agreement Addendum - Sign-On Bonus (HCA-462M Rev 4/2002), and (6) Recruiting Agreement Addendum - Recruiting Into Existing Medical Practice (HCA-462J Rev 7/2002). Pursuant to these agreements, any such monies are to be paid directly to CPC for use in supplementing the Doctor's collections and as payment to the Doctor of the salary, benefits, practice and marketing expenses due hereunder. Such guarantees are a debt of the physician to Doctor's Hospital of Augusta, Inc. and wilt be forgiven and canceled one thirty-sixth (1/36th) per month after the end of the Guarantee Period as described in paragraph 6 of the Recruiting Agreement Addendum - Monthly Physician Assistance Payment with Repayment Forgiveness (HCA-462B Rev 7/2002) (item 2 above). Should the Doctor cease practicing family medicine in the Community prior to the end of the forty-eighth (48th) month of starting his/her practice, then the Doctor shalt be obligated to repay the remaining un-forgiven portion of the Gross Cash Receipts guarantee and other start-up funds provided by the hospital.

[DOC 3-1 or R1-3-1 p. 1 of 19]

12. ENTIRE AGREEMENT. This Agreement supersedes all prior or contemporaneous agreements, undertakings and understandings of the parties in connection with the subject matter of this contract and may be modified or amended only in writing duly signed by the parties.

13. ASSIGNMENT. This Agreement is binding upon and shall inure to the benefit of the parties hereto and neither party may assign its rights hereunder except with the consent of the other. The performance of any provision hereof may be waived only by an agreement in writing. No waiver of any breach shall constitute a waiver of a repeat or continuing breach.

14. NOTICES. Any notice required hereinafter shall be hand delivered or sent by certified U.S. mail, return receipt requested, postage prepaid, to the addresses as provided by the parties hereto. Notices shall be deemed given when received.

15. CONSTRUCTION. This Agreement shall be interpreted and construed in accordance with the laws of the State of Georgia. The titles of the Sections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms and provisions hereof.

16. SEVERABILITY. Each provision of this Agreement shall be considered separate and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity,

unenforceability, or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable, and legal.

17. PRONOUNS. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

IN WITNESS WHEREOF, this Employment Contract has been executed as of the date set forth above.

/s/ Paul M. Fischer, M.D.
Paul M. Fischer, M.D.
Chief Executive Officer
Center for Primary Care, PC

/s/ Seema L. Mishra, M.D.
Seema L. Mishra, M.D.
Doctor

/s/ James Larson
Witness

[DOC 3-1 or R1-3-1 p. 2 of 19]

Center for Primary Care, P.C.

2003 Physician Compensation Plan

(effective January 1, 2003)

Shareholder Physicians

Base salary will be $135,000 per year or $11,250 per month.

Each physician's monthly gross salary will be determined by deducting expenses from revenue. If the amount remaining is greater than $11,250; the **gross salary** will be the **base salary** of $11,250. The remainder will be **net profit** and will be used to calculate the physician's **bonus** and **corporate tax**. If the amount remaining is less than $11,250; that amount will become the **gross salary** for that month.

There will be a tiered bonus and **corporate tax** plan based on the amount of cumulative **corporate tax** paid by each physician.

Cumulative Corporate Tax	Bonus %	Corporate Tax %
$0-$50,000	60%	40%
$50,000-$100,000	70%	30%
$100,000-$150,000	80%	20%
Over $150,000	90%	10%

Bonuses will be calculated and paid each month.

If **gross salary** falls below **base salary** in any month, previously withheld **corporate tax** or future **net profit** in subsequent months will be paid to the physician to bring that physician up to the appropriate cumulative **base salary** for that fiscal year before the bonus & corporate tax formula is applied. However, there will be no carry-over from year to year unless approved by the Board of Directors.

Non-Shareholder Physicians

Physicians under employment contracts who are not shareholders will be paid according to their contract. Generally, this salary will be a **base salary** of ~~$10,000~~ per month.
$11,000 /s/ SLM, MD 10/14/03

Non-shareholder physicians will be eligible for bonuses and any such bonuses will be calculated in the same manner as described above.
[end 7 of 7]

[DOC 3-1 or R1-3-1 p. 3 of 19]
RECRUITING AGREEMENT
HCA-462 (Rev 7/2002)

THIS RECRUITING AGREEMENT ("Agreement") is made and entered into this 6th day of October, 2003, by and between Seema L. Mishra., M.D. (hereinafter "Physician"), and Doctors Hospital of Augusta, LLC., d/b/a, Doctors Hospital (hereinafter "Hospital").

WITNESSETH:

WHEREAS, Physician has agreed to relocate to and commence the private practice of medicine in Augusta, Georgia, (the "Community"), and

WHEREAS, there is a need in the Community for the medical services provided by Physician, and

WHEREAS, Hospital desires to assist Physician in establishing his/her practice,

NOW, THEREFORE, Physician and Hospital hereby agree as follows:

1. Physician shall on or before January 1st, 2004 engage in the full-time private practice of medicine as a/an Family Practice Physician in the Community

2. Hospital's obligations under this Agreement are subject to the following conditions:

   a. Physician being duly licensed as a physician in the State of Georgia & South Carolina

b. Physician obtaining and maintaining full medical staff privileges at Hospital.
c. Physician's timely completion/ submission of all third party insurance provider enrollment, forms and other credentialing documentation no later than thirty (30) days after Physician's commencement of private practice in the Community of as reasonably required by Hospital.
d. Physician's successfully clearing Hospital's standard background check.
e. Physician fulfilling the obligations of this Agreement and the Recruiting Addenda referenced in Section 14 of this Agreement.

Any breach or non-fulfillment by Physician of the foregoing conditions shall be considered a failure of a condition precedent to this Agreement. Any breach or failure to fulfill any other provision of this Agreement by Physician shall be considered material breach of this Agreement by Physician. If such a breach occurs, hospital may, at its options, terminate this Agreement immediately. In addition, Hospital May do either or both of the following:

1. Terminate any further assistance to Physician; and
2. Recover any payments provided to Physician or pain on Physician's behalf pursuant to the terms of this Agreement and the Recruiting Addenda referenced in Section 14 of this Agreement.

Forbearance to exercise either or both of these options with respect to any such breach or

nonfulfillment shall not be considered a waiver of the right as to any subsequent or continuing breach.

3. Physician shall maintain such Medical Staff membership and privileges in good standing and comply fully with Hospital's rules, regulations and Medical Staff Bylaws. Physician agrees to engage in the private practice of medicine as a/an Family Practice Physician in the community on a full-time permanent basis for at least Forty Eight (48) months after Physician commences said private practice (the "Commitment Period"). Physician shall not enter into any contractual agreement or relationship that will impair his/her ability to reside in the Community; and to remain and practice in Hospital's service are during the Commitment Period.

4. Physician shall be available for emergency room coverage for patients at Hospital's emergency room. Physician shall, upon reasonable request of the Hospital, participate in any health maintenance or preferred provider organization, accountable health plan, network or other contractual arrangement in which Hospital participates. Physician agrees to provide a reasonable amount of care for indigent patients both in Physician's office and to Hospital inpatients. Physician further agrees to provide services to patients without discrimination as to the payor source in general, and Physician also agrees to treat patients receiving medical benefits or assistance under any federal health care program in a non-discriminatory manner.

5. At all times during the term of this Agreement, Physician is and shall be an independent contractor and not a servant, agent, or employee of

Hospital. Hospital and Physician further agree that nothing contained herein shall be deemed to create any type of employment, agency, servant, partner, or joint venture relationship between Physician and Hospital.
[end 1 of 3]

6. Physician shall maintain professional liability insurance in the minimum amount of one million Dollars ($1,000,000) per occurrence, three million Dollars ($3,000,000) in the aggregate (claims-made type policy), in any combination of primary or secondary coverage, for so long as Physician engages in the business of providing medical services or is a member of hospital's medical staff, unless legislative changes occur which reasonably dictate that amendment of the insurance requirements be made by the parties hereto. Physician shall provide Hospital with certification of such coverage. Such policies shall provide for at least thirty (30) days written notice to Hospital before any alteration of coverage may take effect. In addition, Physician shall comply with all the requirements of the laws of the State in which the Hospital is located with respect to the purchase of malpractice insurance and payments for such insurance.

7. Physician shall employ his/her own means and methods and exercise his/her own independent medical judgment in his/her practice of medicine and in the performance of all professional services for his/her patients, including Physician's selection of hospitals for admission of, or services for, his/her patients. Physician shall not be subject to the control or direction of Hospital with respect to such means, methods, or judgment, or with respect to such selection. The objective of Hospital in this

Agreement is to encourage Physician to practice medicine and provide professional services to patients and the Community.

8. Nothing in this Agreement shall be construed to required Physician to admit patients to Hospital or to utilize Hospital to provide inpatient, outpatient, or any other services to patients or otherwise generate business for Hospital. Physician may apply for and maintain medical staff membership at and utilize and admit patients to such other institutions other than Hospital as Physician may desire. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 USC § 1320a-7b).

9. Physician represents and warrants to Hospital that Physician (i) is not currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 USC § 1320a-7b(f) (the "Federal health care programs"), (ii) is not convicted of a criminal offense related to the provision of health care items or services but has not yet been excluded, debarred or otherwise declared ineligible to participate in the Federal health care programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Physician being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty during the term of this Agreement and Physician shall immediate notify Hospital of any change in the status of the representation and warranty set forth in this section. Any breach of this section shall give

Hospital the right to terminate this Agreement immediately for cause.

10. HIPAA Requirements. To the extent applicable to this Agreement, Physician agrees to comply with the Health Insurance Portability and Accountability Act of 1996 as codified at 42 USC § 1320d ("HIPAA") and any current and future regulations promulgated thereunder including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in the 45 C.F.R. parts 160 and 162, all collectively referred to herein as "HIPAA Requirements". Physician agrees not to use or further disclose any Protected health Information (as defined in 45 C.F.R. § 164.501) or Individually Identifiable Health Information (as defined in 42 USC § 1320d) other than as permitted by HIPAA Requirements and the terms of this Agreement. Physician shall make his or her internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations.

11. This Agreement incorporates completely all of the compensation, inducements and benefits offered by Hospital and there are no others in addition to those stated herein. All prior communications, oral or written, between the parties or with anyone on behalf of the parties, are merged into this Agreement.

12. Physician shall not assign this Agreement to any other party or parties without the prior written consent of the Hospital. Hospital may assign all of its rights and duties under this Agreement to any affiliate or to any entity that purchases all or substantially all of hospital's operating assets without the consent of Physician and without recourse. This Agreement shall inure to the benefit of and be binding up the parties hereto and their respective successors and permitted assigns.

13. Any controversy or claim arising out of or related to this Agreement, or any breach thereof, shall be settled by arbitration in accordance with the rules and procedures of alternative dispute resolution and arbitration established by the Alternative Dispute Resolution Service of the American Health Lawyers Association ("AHLA"), and judgment upon any award rendered may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted before a single AHLA Arbitrator selected jointly by the parties, or in the event the parties are unable to agree, designated by the AHLA.

[end 2 of 3]

14. The following addenda are attached to and made a part of this Agreement.

ADDENDUM	TITLE	FORM NUMBER
1	Net Collectable Revenue Guarantee with Repayment Forgiveness	HCA-462B
2	Marketing Expense Reimbursement	HCA-462-D
3	Sign-On-Bonus	HCA-462M
4	Agreement as to Medical Practice Role in Recruitment	
5		
6		
7		
8		

15. This Agreement shall not be effective nor legally binding on Physician or Hospital until it has be reviewed and approved in writing by a Senior Vice President of the Hospital by Hospital's Legal Counsel and Physician Services Operations Vice President.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the dates listed immediately beneath their signatures.

PHYSICIAN
Seema L. Mishra, M.D.
/s/ Seema L. Mishra
SSN# 193-58-2348

Dated 11/16/03

HOSPITAL
Doctors Hospital of
Augusta, LLC.
d/b/a Doctors Hospital

By: /s/ _____
Hospital Chief Executive Officer
Dated: 10/8/03

[end 3 of 3]

[DOC 3-1 or R1-3-1 p. 6 of 19]

PROMISSORY NOTE

[Exhibit A]

$24,000.00 October 6th, 2003

[OR SUCH LESSOR AMOUNTS ACTUALLY ADVANCED-SUBJECT TO FORGIVENESS]

FOR VALUE RECEIVED, the undersigned, Seema L. Mishra, M.D., ("Physician" or "Maker"), hereby promises to pay, according to the terms of this Note, to Doctors Hospital of Augusta, LLC., d/b/a Doctors Hospital, ("Hospital" or "Holder") at 3651 Wheeler Rd, Augusta, GA 30909 or at such other place as the Holder hereof may designate from time to time, the principal sum of Two Hundred Forty Thousand Dollars ($240,000.00) or such lesser amounts as are actually advanced to Physician which is referenced to as the "Loan Repayment Amount" in the attached document, pursuant to the terms of the Physician Recruitment Agreement dated as of October 6th, 2003 between Hospital and Physician (the "Agreement") to which this Note is attached hereto and in which it is referred to as Exhibit A (which provisions are incorporated by reference herein) together with interest at the rate per annum equal to the lower of prime as reported in the money market rates section of the *Wall Street Journal* on the date provided above plus one percent (1%) or the maximum rate permitted by law. Interest on the Loan Repayment Amount will begin to accrue at the end of the Guarantee Period. However, interest will be forgiven on any amounts repaid within six (6) months of the end of the Guarantee Period. This forgiven amount, if any, will be reported

on Form 1099 as prescribed by the Internal Revenue Service.

Amounts outstanding under this Note are subject to forgiveness but shall become due and payable if Physician shall fail at any time during the Commitment Period (as defined in the Agreement and incorporated by reference herein) to fulfill his/her obligations set forth in the Agreement, and such default shall continue for a period of 10 days after the defaulting party receives written notice thereof from the other party specifying the existence of such default and the defaulting party has not commenced a cure of such compliance and demonstrated continued diligent pursuit of such cure after notice of default.

Amounts so payable, and interest shall be payable in thirty six (36) equal monthly installments, the first such payment to be paid on the first business day of the month following receipt of written notice that amounts are due here under and subsequent installments to be paid on the same day of each succeeding calendar month until all amounts have been paid. The Maker may pre-pay, without premium or penalty, all or any part of this Note at any time and from time to time. All payments shall be payable in lawful money of the United States.

As security for the payment of principal interest on this Note ; Maker hereby irrevocably grants to Holder as security interest in, and irrevocably assigns to Holder all accounts receivable and equipment of Maker's private practice, whether now existing or hereafter arising (but excluding those for goods or services to be paid for under federal or state insurance or reimbursement program that prohibits assignment of such

receivables), to secure Maker's payment and performance of this Note, including without limitation, payment of all principal and interest on this Note. Maker hereby agrees to permit holder to make regular audits of the Maker's accounts receivable balances. Maker acknowledges and agrees that Holder may file a UCC Financing Statement to perfect Holder's security interest in Maker's equipment and accounts receivable.

If any of the Events of Default described below shall occur, Maker immediately shall give to Holder and permit Holder to collect all equipment and accounts receivable then existing or thereafter arising from Maker's private practice until all Events of Default are cured, and Maker also shall cooperate by endorsing and delivering to Holder all checks and other payments from Maker's accounts receivable.

Maker warrants and represents to Holder that, except for security interests granted in connection with the purchase of equipment, Maker will not grant any security interests in or assign such equipment or accounts receivable to any other person or entity during the term of this Note. Maker further warrants and represents to Holder that, except for security interests granted in connection with the purchase of equipment, and except for the security interest granted by Maker (list here all prior holders of a security interest, if any, in the accounts receivable and equipment)_____

_____

such equipment and accounts receivable presently are not subject to any security interest of any other creditor.

If at any time during the term of this Note any of the following events (each an "Event of Default")

shall occur: (1) Maker fails to pay any interest or principal when due hereunder, and such failure to pay is not cured within ten (10) days after Holder gives written notice to Maker of such failure to pay; (2) Any voluntary or involuntary bankruptcy, liquidation, insolvency, readjustment of debt or other similar act or proceeding shall be commenced by or against Maker; (3) Maker shall apply for, or there shall be appointed, a receiver, custodian or trustee for all or a substantial part of Makers assets; (4) Maker shall make an assignment for the benefit of creditors; (5) Maker shall be unable to pay its debts generally as they become due; or (6) Maker breaches any of Makers representations, warranties,

ATTACHMENT TO HCA-462B

[end 1 of 2]

or covenants; then, automatically upon the occurrence of (2), (3), (4), or (5), and at the election of Holder upon the occurrence of (1) or (6), the entire amount of unpaid interest and principal hereunder shall become due and payable immediately without diligence, presentment, protest, demand or notice of protest, demand, dishonor or nonpayment, all of which are expressly waived hereby.

Maker may not assign his/her obligation under this Note without the prior written consent of Holder. This Notes shall be binding on and enforceable against Maker and Maker's successors and assigns.

THIS NOTE SHALL BE GOVERNED AND CONSTRUED IN ACCORANCE WITH THE LAWS OF THE STATE IN WHICHTHE FACILITY IS LOCATED.

If action is instituted on this Note the Maker shall pay to the Holder the cost of collection and such sum as the court may fix as attorneys' fees and costs.

Date: 11/16/03 /s/ Seema L. Mishra
(Signature of "Maker")
ATTACHMENT TO HCA-462B

[end 2 of 2]

[DOC 3-1 or R1-3-1 p. 10 of 19]

RECRUITING AGREEMENT ADDENDUM No. 1

MONTHLY PHYSICIAN ASSISTANCE PAYMENT WITH REPAYMENT FORGIVENESS (HCA-462B Rev 7/2002)

This Addendum is attached to, made a part of and executed simultaneously with that certain Recruiting Agreement between the undersigned, dated the 6th day of October, 2003.

1. Hospital hereby agrees to loan Physician certain amount of money which Hospital shall advance as a guarantee of Gross Cash Receipts (as defined in Paragraph 2 hereinafter) for Physician totaling Two Hundred Forty Thousand Dollars ($240,000.000) (hereinafter the "Guarantee Amount") over actively commences the private practice of medicine in the Community. The monthly Guarantee Amounts (as listed below) shall be paid in accordance with Paragraphs 2 and 3 of this addendum in the following manner:

Month 1: $40,000.00	Month 7: $20,000.00
Month 2: $20,000.00	Month 8: $20,000.00
Month 3: $20,000.00	Month 9: $20,000.00
Month 4: $20,000.00	Month 10: $20,000.00
Month 5: $20,000.00	Month 11: $20,000.00
Month 6: $20,000.00	Month 12: $0.00

Gross Cash Receipts and any Guarantee Amount Payments are to be used to cover the expenses of Physician medical practice (which can include Physician's costs incurred for practice managements services, if any) and to provide income to Physician.

2. At the end of each calendar month during the Guarantee Period, Hospital shall pay to

Physician the amount by which Physician's Gross Cash Receipts for such month are less than the Guarantee Amount for that month. The amount so paid shall be the Guarantee Payment. If the first and/or last months of this Agreement is/are less than full calendar months, Physician's Gross Cash Receipts shall be deducted from the product of the Guarantee Amount multiplied by a fraction, the number of which shall be the number of days. Physician has engaged in the private practice of medicine in the Community, and the denominator of which shall be thirty (30). As used herein, the term "Cross Cash Receipts" shall mean all cash collected by Physician from all phases of his/her medical practice from any and all sources whatsoever, including, but not limited to, office calls, hospital practice and emergency room treatments.

3. On or before the fifteenth (15th) day of each month, Physician shall forward a statement of Gross Cash Receipts from the preceding month with a written certification of the accuracy of such statement to Hospital. If requested by Hospital, Physician shall also forward any supporting documentation of Gross Cash Receipts. Monthly payments to Physician shall be made within fifteen (15) days following the receipt of Physician's statement of Gross Cash Receipts and certification thereof. If, however, during any month during the term of this Agreement Physician's Gross Cash Receipts are equal to or more than the monthly Guarantee Amount, the Hospital shall have no obligation hereunder to pay Physician any amount for such month. Further, if during any month Physician's Gross Cash Receipts exceed the monthly Guarantee Amount, such excess amount ("Excess") shall be subtracted from the Guarantee Amount for

that next month and from any Guarantee Amounts for subsequent months until the Excess has been fully offset. If at any time during the term of this Agreement, Physician's Gross Cash Receipts total $240,000.00 the Hospital shall have no further obligation to pay Physician any amounts hereunder.

4. Physician agrees to promptly bill all patients or third party payors for all services rendered and to use his/her best efforts to collect all patient accounts. Physician further agrees to use his or her best efforts to bill such patients or third-party payors by the tenth (10th) day of the calendar month following the visit by the patient. Hospital shall have the right to review and audit Physician's books and records for whatever period of time is necessary to assure compliance with this Agreement.

5. At the end of the Guarantee Period the sum of all Guarantee Payments made by Hospital to Physician during the Guarantee Period, not otherwise recouped pursuant to any other provision is this Addendum, shall be calculated. This amount represents the "Loan Repayment Amount" which shall be due and payable by Physician as evidence by the attached Promissory Note (Exhibit "A") executed by Physician. Although not included in the Loan Repayment Amount, additional amounts may be due from Physician to Hospital in accordance with the terms of the Addenda attached and made a part of the Recruiting Agreement. Interest on the Loan Repayment Amount will begin to accrue at the end of the Guarantee Period. However, interest will be forgiven on any amounts repaid

[end 1 of 2]

within six (6) months of the end of the Guarantee Period. This forgiven amount, if any, will be

reported on Form 1099 as prescribed by the Internal Revenue Service.

6. In recognition of the fact that Physician is initiating a start-up, initial practice and to induce Physician to remain in the Community beyond the Guarantee Period, Hospital agrees that it will forgive and cancel one thirty-sixth (1/36th) of Physician's debt to Hospital for each full calendar month Physician (1) remains in the full-time practice of medicine in the Community after the end of the Guarantee Period, (2) maintains Medical Staff membership and privileges in good standing at the Hospital, and (3) remains available for emergency room coverage for patients of Hospital's emergency room. Amounts forgive, if any, (as well as any imputed income as required by law), will be reported on Form 1099 in accordance with the laws regarding the Internal Revenue Service.

7. Any failure by Physician to comply with the terms of paragraph 6 shall be considered a substantial breach as set forth in Section 2 of the Recruiting Agreement between the parties.

PHYSICIAN
Seema L. Mishra, M.D.
/s/ Seema L. Mishra
SSN# 193-58-2348
Dated 11/16/03

HOSPITAL
Doctors Hospital of
Augutsa, LLC.
d/b/a Doctors Hospital

By: /s/ _____
Hospital Chief Executive Officer
Dated: 10/8/03

[end 2 of 2]

[DOC 3-1 or R1-3-1 p. 12 of 19]

RECRUITING AGREEMENT ADDENDUM No. 2
MARKETING EXPENSE REIMBURSEMENT (HCA-462D Rev 4/2002)

This Addendum is attached to, made a part of and executed simultaneously with that certain Recruiting Agreement between the undersigned, dated the 6th day of October 6th, 2003.

1. Hospital shall reimburse Physician for reasonable and appropriate expenses incurred in marketing his/her new practice in the community, including (i) placing local newspapers advertisements announcing the Physician's new business at: 105 Hugh Street, North Augusta, South Carolina 29841 (ii) printing and mailing announcement cards and (iii) placing listings in local telephone directories. Such amount shall be limited to a total maximum of $5,000.00 and shall be paid upon presentation by Physician of invoices and supporting documentation evidencing such expenditures, on or before January 1st, 2004.

2. In the event Physician fails to maintain a full-time practice of medicine in the Community as required by Section 3 of the Recruiting Agreement, Physician shall immediately upon demand pay to Hospital the unamortized amount of the total sums reimbursed to Physician pursuant to this Addendum. The unamortized amount becoming due and payable shall be calculated by multiplying the total sum reimbursed here under by a fraction. The numerator of said fraction shall be equal to the sum of the whole and partial calendar months measured from the date Physician ceased to maintain a full-time private practice in the Community as required hereunder through the end of the term specified in Section 3 of the Recruiting Agreement. The

denominator shall be equal to the number of months designated in Section 3 of the Recruiting Agreement.

PHYSICIAN
Seema L. Mishra, M.D.
/s/ Seema L. Mishra
SSN# 193-58-2348
Dated 11/16/03

HOSPITAL
Doctors Hospital of
Augutsa. LLC.
d/b/a Doctors Hospital

By: /s/_____
Hospital Chief Executive Officer
Dated: 10/8/03

[end 1 of 1]

[DOC 3-1 or R1-3-1 p. 13 of 19]

RECRUITING AGREEMENT ADDENDUM No. 3
SIGN-ON BONUS (HCA-462M Rev 4/2002)

This Addendum is attached to, made a part of and executed simultaneously with that certain Recruiting Agreement between the undersigned, dated the 6th day of October, 2003.

1. Hospital agrees to pay Physician a Sign-On Bonus of $20,000.00. Such bonus shall be payable upon receipt of the fully executed Recruitment Agreement and shall be subject to the conditions described below.

2. In the event Physician fails to maintain a full-time practice of medicine in the Community as required by Section 3 of the Recruiting Agreement, Physician shall immediately, upon demand, pay to Hospital the unamortized amount of the total sums reimbursed to Physician pursuant to this Addendum. The unamortized amount becoming due and payable shall be calculated by multiplying the total sums reimbursed hereunder by a fraction. The numerator of said fraction shall be equal to the sum of the whole and partial calendar months measured from the date the Physician ceased to maintain a full-time private practice in the Community as required hereunder through the end of the term specified in Section 3 of the Recruitment Agreement. The denominator of said fraction shall be equal to the number of months designated in Section 3 of the Recruiting Agreement.

PHYSICIAN
Seema L. Mishra, M.D.
/s/ Seema L. Mishra
SSN# 193-58-2348
Dated 11/16/03

HOSPITAL
Doctors Hospital of
Augusta. LLC.
d/b/a Doctors Hospital

By: /s/_____
Hospital Chief Executive Officer
Dated: 10/8/03

[end 1 of 1]

[DOC 3-1 or R1-3-1 p. 14 of 19]

AGREEMENT AS TO MEDICAL PRACTICE'S ROLE IN RECRUITMENT

This Agreement to Medical Practice's Role in Recruitment ("Agreement") is made and entered into this 6th day of October, 2003 by and between Seema L. Mishra, M.D. Doctors Hospital (d/b/a) Doctors Hospital of Augusta, LLC., ("Hospital"), Seema L. Mishra, M.D. ("Physician"), and Center For Primary Care ("Practice").

WITNESSETH:

WHEREAS, Hospital has determined that a need exists in its community, which is Augusta, Georgia ("Community"), for the medical services provided by Physician and

WHEREAS, Hospital desires to assist Physician in establishing his/her practice in the Community in an effort to meet that need; and

WHEREAS, as part of Hospital's recruitment of Physician to Community, Hospital is providing certain financial assistance to Physician as set forth in that certain Recruiting Agreement entered into between Hospital and Physician dated October 6th, 2003, ("Recruiting Agreement") and

WHEREAS, Physician has represented to Hospital that Physician is joining Practice in the practice of medicine; and

WHEREAS, Practice acknowledges that the Physician owes certain obligations and responsibilities to Hospital pursuant to the terms of the Recruiting Agreement,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein the parties hereby agree as follows:

1. Practice hereby represents and warrants that all financial information it has provided to Physician, including not limited to information included on the Physician Expense Worksheet completed by Physician, a copy of which is attached hereto as Exhibit "A", is true and correct. Practice acknowledges that information provided is being relied upon by Physician and Hospital in determining the appropriate amount of financial assistance to be provided by Hospital to Physician pursuant to the terms of the Recruiting Agreement.

2. If the relationship between Practice and Physician terminates or expires before Physician has fulfilled his/her obligation pursuant to the terms of the Recruiting Agreement and Practice prohibits Physician from practicing in the community, Practice agrees to pay Hospital 100% of Physician's obligation under his/her Recruiting Agreement and Addenda referenced in Section 14 of the Agreement if Physician leaves the Community within two years post recruitment, and if Physician leaves after two years but before four years, post recruitment, Practice agrees to pay Physician's prorated share of Physician's obligation under his/her Recruiting Agreement and any Addenda referenced in Section 14 of the Agreement for the number of months fewer than 48 that Physician stays in Community.

3. Practice grants Hospital the right to review and audit Practices books and records as they pertain to Physician to assure Physician's compliance with the terms and conditions of the Recruiting Agreement.

4. Nothing in this Agreement shall be construed to require Practice's physicians to admit patients to Hospital or to utilize Hospital to provide inpatient, outpatient, or any other service to patients to otherwise to generate business for Hospital. Notwithstanding any unanticipated effect of any provision of this Agreement no party will knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with Medicare and Medicaid programs (42 USC § 1329a-7b).

5. Practice shall not assign this Agreement to any other party or parties without the prior written consent of Hospital.

6. In the event Practice breaches any provision of this Agreement, Practice shall be liable to Hospital for all amounts paid to Physician pursuant to the terms of the Recruiting Agreement.

7. This Agreement shall be construed and governed by the laws of the Stat in which the Hospital is located.

8. No waiver of any item or condition of the Agreement by either party shall be deemed a continuing or further waiver of the same terms or condition or a waiver of another term or condition of this Agreement unless confirmed in writing by bother parties.

[end 1 of 2]

9. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes any previous agreement or understanding, whether oral or written. None of the terms or provisions hereof may be amended, supplemented, waived or changed orally, buy only by

a writing signed by both parties making specific reference to this Agreement.

10. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

11. If any portion or portions of this Agreement shall be for any reason invalid or unenforceable, the remaining portion(s) shall be valid and enforceable and carried into effect unless to do so would clearly violate and present legal and valid intention of the parties.

PHYSICIAN
Seema L. Mishra, M.D.
/s/ Seema L. Mishra
SSN# 193-58-2348
Dated 11/16/03

PRACTICE
Center For Primary Care
By: /s/ _____
Dated: 11/24/03

HOSPITAL
Doctors Hospital of Augutsa. LLC.
d/b/a Doctors Hospital

By: /s/ _____
Hospital Chief Executive Officer
Dated: 10/8/03

[end 2 of 2]

[DOC 3-1 or R1-3-1 p. 16 of 19]

PHYSICIAN EXPENSE WORKSHEET
Net Collectable Revenue Guarantee
Calculation Worksheet

Hospital: Doctors Hospital of Augusta
Recruit's Name: Seema L. Mishra, M.D.
Practice Name: Center for Primary Care
Prepared by: Cathy Scott
Date: 10/06/03

Incremental Overhead/Operating Expenses of the Recruit for Period:

New Support Staff Salaries and Benefits	$52,400.00
Additional Office Rent	$9,375.00
Utilities	$
Medical Supplies	$4,000.00
Lab/X-Ray	$5,000.00
Equipment Rental	$
Legal & Professional Fees	$1,500.00
Management Fees	$3,325.00
Transcription	$
Admin. Supplies & Services	$1,200.00
Promotion & Marketing	$
Telephone	$6,900.00
General Business Insurance	$1,800.00
Malpractice Insurance	$7,500.00
Outside Services	$
Other	$
TOTAL INCREMENTAL OVERHEAD/OPERATING EXPENSES(a)	$93,000.00

Estimated Compensation and Benefits Costs for the Recruit for Period

Salary Compensation	$120,000.00
Benefits	$24,000.00
CME	$2,000.00
Dues & Subscriptions	$1,000.00
Other	$
TOTAL COMP & BENEFITS (b)	$147,000.00

TOTAL NET COLLECTABLE REVENUE GUARANTEE FOR PERIOD = (a+b) $240,000.00

Term: Months of Guarantee Period	12
Monthly Net Collectible Guarantee Amount	$ 20,000.00

I hereby represent that the financial information provided above is true and correct to the best of my knowledge.

/s/ Seema L. Mishra, M.D.	11/16/03
Signature of Physician	Date
/s/Paul Fischer, M.D.	11/24/03
Practice	Date

EXHIBIT A to Agreement to Medical Practice's Role in Recruitment
[end 1 of 1]

[DOC 3-1 or R1-3-1 p. 17 of 19]

AMENDMENT

RECRUITING AGREEMENT ~~ADDENDUM~~
STARK II, PHASE II CONFORMING CHANGED
(HCA-462O New 4/2004)

AMENDMENT dated the 20th of July

THIS ~~ADDNDUM ("Addendum")~~ ^ is attached to, made a part of, and executed simultaneously with that certain Recruiting Agreement between the undersigned, dated the ~~20th~~-day of ~~July, 2004.~~ 6th October 03

WITNESSETH:

WHEREAS, on March 26, 2004, the Center's for Medicare and Medicaid Services ("CMS") in the Department of Health and Human Services ("HHS") promulgated an interim final rule with comment period interpreting certain aspects of the physician self-referral law, 42 U.S.C. § 1395nn, commonly known as Stark II, 69 Fed. Reg. 16054(Mar. 26,2004) ("Stark II, Phase II regulations"); and

WHEREAS, the Stark II, Phase II regulations contain a new exception addressing physician recruitment, 69 Fed. Reg. at 16,139 (to be codified at 42 C.F.R. § 411 357(e)), which becomes effective on July 26, 2004; and

WHEREAS, the parties recognize that new physician recruitment exception requires certain changes to be made to the Recruiting Agreement and any Addenda thereto insure that they are in compliance with the new physician recruitment exception and other relevant aspects of the Stark II, Phase II regulations;

NOW THEREFORE, in consideration of the mutual promises made herein, Physician and Hospital agree as follows:

1. RELOCATION OF MEDICAL PRACTICE: Physician agrees to relocate his or her medical practice (not residence) into the geographic area served by Hospital.

1.1 *Relocate* Physician shall be deemed to have related his or her medical practice if (*check the one that applies*)

a.___ Physician moves his or her medical practice at least twenty-five (25) miles.

b.___ For the Commitment Period (defined in Section 3 of the Recruiting Agreement), Physician represents and warrants that he or she shall derive at least seventy-five percent (75%) of his or her professional services revenues at his or her new medical practice from professional services furnished to patients (including hospital inpatients) not seen or treated by Physician at his or her prior medical practice during the preceding three (3) years. The 75-percent revenue test shall be calculated on an annual basis (consistently using either the prior fiscal or calendar year). For purposes of satisfying the 75-percent revenue test for the initial "start up" year of Physician's practice. Physician shall have a reasonable expectation that 75-percent revenue test will be satisfied. Physician's failure to satisfy the 75-percent test for any year of the Commitment Period shall be considered a material breach of the Recruiting Agreement by Physician and Hospital may, at its option, do any or all of the following: (i) terminate the Recruiting Agreement immediately; (ii) terminate any further assistance to Physician; or (iii) recover any sums paid to, or on behalf of, Physician pursuant to the terms of the Recruiting

Agreement or any Addenda thereto jointly and severally from Physician and Practice.

c.___ Physician is a resident.

d.___ Physician has been practicing one (1) year or less.

1.2 *Into Georaphic (sic) Area Served by Hospital.* For the Commitment Period (defined in Section 3 of the Recruiting Agreement), Physician represents and warrants that his or her medical practice shall be located in the geographic area served by Hospital. The "geographic area served by Hospital" shall consist of the area composed of the lowest number of contiguous zip codes from which Hospital draws at least 75 percent of its inpatients. The geographic area served by Hospital shall be determined at the time the parties enter into the Recruiting Agreement and shall remain unchanged for the Commitment Period for purposes of this Recruiting Agreement and any Addenda thereto.

A change in location of Physician's medical practice outside of the geographic area served by Hospital prior to the end of the Commitment Period shall be considered a material breach of the Recruiting Agreement by Physician and Practice. In the event of such a material breach, Hospital may, at its option, do any or all of the following: (i) terminate the Recruiting Agreement immediately; (ii) terminate any further assistance to Physician or Practice; or (iii) recover the unamortized amount of the total sums paid to, or on behalf of, Physician or Practice pursuant to the terms of the Recruiting Agreement and any Addenda thereto jointly and severally from Physician and Practice. The unamortized amount becoming due and payable shall

[end 1 of 3]

be calculated by multiplying the total sums paid to, or on behalf of, Physician and Practice pursuant to the terms of the Recruiting Agreement and any Addenda thereto by a fraction. The numerator of said fraction shall be equal to the sum of the whole and partial calendar months measured from the date of the change in location of Physician's medical practice outside of the geographic area served by Hospital through the end of the term specified in Section 3 of the Recruiting Agreement. The denominator of said fraction shall be equal to the number of months designated in Section 3 of the Recruiting Agreement.

2. PROHIBITION AGAINST PRACTICE RESTRICTIONS. Physician and Practice agree that Physician may not enter into a non-compete agreement or other similar Practice restriction (except for conditions related solely to quality of care) with Practice. Physician's entry into a non compete agreement or other similar practice restriction (except for conditions related solely to quality of care) with Practice prior to the end of the Commitment Period shall be considered a material breach of the Recruiting Agreement by Physician and Practice. In the event of such a material breach, Hospital may, at its option, do any or all of the following: (i) terminate the Recruiting Agreement immediately; (ii) terminate any further assistance to Physician or Practice; or (iii) recover the unamortized amount of the total sums paid to, or on behalf of, Physician or Practice pursuant to the terms of the Recruiting Agreement and any Addenda thereto jointly and severally from Physician and Practice the unamortized amount to becoming due and payable shall be calculated by multiplying the total sums paid to or on behalf of , Physician and

Practice pursuant to the terms of the Recruiting Agreement and any Addenda thereto by a fraction. The numerator of said fraction shall be equal to the sum of the whole and partial calendar months measured from the date the Physician and Practice entered into the non-compete agreement or other similar practice restriction through the end of the term specified in Section 3 of the Recruiting Agreement. The denominator of said fraction shall be equal to the number of months designated in Section 3 of the Recruiting Agreement.

3. PAYMENTS.

3.1 *Payments to Remain with Physician.* Notwithstanding any other provision of the Recruiting Agreement or any Addenda thereto, Practice agrees that with the exception of actual costs incurred by Practice in recruiting Physician, all payments made by Hospital either to Physician, Practice, or jointly to Physician and Practice pursuant to the Recruiting Agreement or any Addenda thereto shall be passed directly through to and remain with Physician.

3.2 *Payments Directly to Practice.* To the extent any payments under the Recruiting Agreement or any Addenda thereto are made *directly* to Practice. Practice agrees, by signing this Addendum, to be bound by the Recruiting Agreement and any Addenda as if it had affixed signature directly thereto.

4. INCOME GUARANTEE/MONTHLY ASSISTANCE PAYMENTS. To the extent the Recruiting Agreement and any Addenda thereto involve an income guarantee or other monthly assistance payments, the parties agree that the costs may be allocated to Physician are limited to the actual additional incremental cost attributable to the

recruitment of Physician. The parties agree that additional incremental costs do not include Physicians *pro rata* share of existing Practice expenses, but rather new expenses that are incurred due to the recruitment of Physician. (For example additional incremental costs do not include Physicians *pro rata* share of Practices existing space lease payment, but it would include the lease payment for new space added to accommodate Physician joining Practice.) The parties also agree that the additional incremental costs actually must be incurred to be included in the calculation of the income guarantee. Practice agrees to provide to Hospital, upon request, documentation evidencing that all costs allocated to Physician for purposes of the income guarantee constitute additional incremental costs that were actually incurred by Practice

5. RECORD RETENTION. The parties agree to retain all records and other documents of all actual expenses and any pass through amounts related to the Recruiting Agreement or any Addenda thereto for not less than 5 years from the date of the expense or the pass through payment. The parties further agree to make such records available to HHS, upon request.

6. CHANGE IN LAW. In the event any applicable regulation, policy, official interpretation thereof, or official guidance thereon is modified, implemented, or scheduled to be implemented so that any material provision of the Recruiting Agreement or any Addenda thereto is no longer in compliance therewith (collectively a "Change in Law"), the parties agree to negotiated in good faith to restructure the Recruiting Agreement and any Addenda, thereto in compliance with the Change in

Law and consistent with the intent of the parties. If the parties are unable to agree to new or modified terms within a reasonable period of time, any party may, at its option, terminate the Recruiting Agreement immediately. In addition, if the parties are unable to agree to new or modified terms within a reasonable period of time, Hospital may, at its option, terminate any further assistance to Physician and/or recover the unamortized amount of the total sums paid to, or on behalf of, Physician pursuant to the terms of the Recruiting Agreement and any Addenda thereto from Physician. The unamortized amount becoming due and payable shall be calculated by multiplying the total sums paid to, or on behalf of, Physician pursuant to the terms of the Recruiting Agreement and any Addenda thereto by a fraction. The numerator of said fraction shall be equal to the sum of the whole and partial calendar months measured from the date of Change in Law through the end of the term specified in Section 3 of the Recruiting Agreement. The denominator of said fraction shall be equal to the number of months designated in Section 3 of the Recruiting Agreement.

[end 2 of 3]

7. MISCELLANEIOUS

7.1 *Continuing Validity.* Except as specifically set forth herein, the Recruiting Agreement and any Addenda thereto shall continue in force on their original terms and conditions until properly terminated by either party.

7.2 *Interpretation.* All defined terms not specifically or otherwise defined in this Addendum shall have the same meaning as in the Recruiting Agreement and any Addenda thereto. In the event of a conflict between any specific provision

of this Addendum and any specific provision in the Recruiting Agreement or any Addenda thereto, the specific provisions of this Addendum shall control. Any ambiguity in the Recruiting Agreement and any Addenda thereto shall be resolved in favor of a meaning that permits the parties to comply with the physician self-referral law, 42 U.S.C.§ 1395nn, and the anti-kickback law, 42 U.S.C. § 1320a-7b(b).

7.3 *Waiver.* No provision of the Recruiting Agreement or any Addenda thereto or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No failure to exercise and no delay in exercising any right or remedy shall operate as a waiver. The waiver of any one breach of the Recruiting Agreement or any Addenda thereto shall not be construed as a waiver of any rights or remedies with respect to any different or subsequent breach.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date first set forth above.

PHYSICIAN
Seema L. Mishra, M.D.
/s/ Seema L. Mishra
SSN# 193-58-2348
Dated 7/26/04

PRACTICE:
Center for Primary Care-
North Augusta
EIN # 582069754
By: /s/
Title: CEO
Date: 7/26/04

HOSPITAL
Doctors Hospital of
Augusta. LLC.
d/b/a Doctors Hospital
By: /s/
Hospital Chief Executive Officer
Dated: 7/28/04

[end 3 of 3; end R1-3-1 19 of 19]

[DOC 17 or R2-17 p. 1 of 25]
IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

SEEMA L. MISHRA, M.D., on her own behalf, individually, and on behalf of her patients, both private pay and those receiving Medicaid or Medicare from the federal government or financial assistance for healthcare from the State of South Carolina,	)	
Plaintiff,	)	
v.	)	CV 105-101
HCA INC., privately and under color of law; DOCTORS HOSPITALOF AUGUSTA, LLC d/b/aDOCOTRS HOSPITAL OF AUGUSTA, and its parent, THE CORPORATION OF AMERICA,	)	
THE CENTER FOR PRIMARYCARE, and	)	
JIM LARSON,	)	
Defendants.	)	

FILED
U.S. DISTRICT COURT
AUGUSTA DIV
2005 OCT -6 PM 4:47
CLERK: /s/
SO. DIST. OF GA.

ORDER

SECOND DECLARATION OF SEEMA L. MISHRA, M.D.

Personally appeared Seema L. Mishra, M.D., who with knowledge of the penalties for perjury states that the following facts are true of her own personal knowledge:

1. That my name is Seema L. Mishra, M.D., that my signature is below, and that I am adult competent to make this statement.

2. That I am a resident of South Carolina and I live at St. Julian Place, North Augusta, SC and attached at Tab 7 is a copy of an agreement signed by Terry Gunn CEO of Doctor's Hospital and me **[end 1 of 6]** showing that "the Community" intended for the "new business" was North Augusta.

3. That in the letters from Michael Thomerson it states that I received a Sign on Bonus, but the first checks I received from CPC were a pay check and some relocation expenses.

4. That my pay check was consistent with the

rest of my paychecks based on the salary of $11,000 per month with withholding taken out and the relocation paid by CPC was not even close to $20,000.

5. Attached hereto at Tab 1 is a copy of a letter dated January 23, 2005 from me to Shayne George, the CEO of Doctors Hospital.

6. On or about January 10, I had called him and asked about any obligations I might have with Doctor's Hospital, given that CPC had terminated me.

7. I also asked Mr. George on January 10, 2005, what Doctor's Hospital was going to do to help me continue to practice in North Augusta.

8. That I was waiting for Doctor's Hospital to tell me what could be done to get me started or what their positions would be.

9. That I thought I had been fired wrongly, that CPC had breached, and the agreement with CPC and the agreement with Doctor's Hospital was over, unless Doctor's Hospital wanted to start something new.

10. I thought that Doctor's Hospital might let me have some space in the building in North Augusta which had openings, which CPC owns, but which Doctor's Hospital was leasing.

11. In my conversation with Mr. George on about January 10, he said that the Doctor's Hospital attorney would contact me within a week, but that

by January 23, 2005, I still had not been contacted.

12. That attached hereto at Tab 2 is a copy of a letter from me to Robert Clark, the Director of **[end 2 of 6]** Operations reflecting my termination on December 17, 2004, what I was told to do, that I completed charts, removed personal effects and furniture.

13. That in this letter at Tab 2 I asked for a formal statement from CPC and thanked him.

14. That attached hereto at Tab 3 is a letter from Robert Clark to me dated February 1, 2005.

15. Robert Clark said that I had been terminated in accordance with paragraphs 3, 8, 9 and 10 of the Employment Contract.

16. He mentioned the claim that I did not keep up with my notes.

17. He stated that in accordance with paragraph 8 of the employment contract because I was "involuntarily separated by CPC" that I would not be required to re-pay any of the costs incurred by CPC to develop the practice which incorrectly states was my practice.

18. He said that I would still be responsible for a promissory note that should be forgiven by Doctor's Hospital as long as I continue to practice family medicine in the community.

19. He instructed me to contact Doctor's Hospital to determine what locations are

considered "in the community" and keep informed of your employment status.

20. That during December I considered what was available in North Augusta, but there was only Dr. Broder, Dr. Velki, and CPC.

21. That I tried to find work at the VA and Fort Gordon in Augusta but nothing was available.

22. That attached hereto at Tab 4 is a letter from Michael J. Thomerson on behalf of Doctor's Hospital dated February 9, 2005.
23. He indicated that I was in breach of the Agreement because I had ceased practicing in Augusta full time.

24. I have never seen outpatients for CPC at any place other than North Augusta, SC.
[end 3 of 6]

25. The intent of my Employment Contract with CPC was to be an employee physician for CPC in a new office in North Augusta, with the hope of becoming a partner after two years.

26. The letter gives me formal notice of default under Section 3 of the Recruiting Agreement claiming that because I had failed to "practice medicine in Augusta full-time" then the full amount the Hospital paid by the Hospital $88,698.81 would become due.

27. It stated that I had ten days to commence to cure the default.

28. If I did not cure the default by practicing in Augusta the full amount would become due.

29. The letter also stated that I would have to pay $3,854.17 for Marketing Expense.

30. The letter also stated that I would have to repay $15,416.67 of a "sign on bonus."

31. The checks that I received were pay checks and the relocation money all from CPC.

32. According to the letter it warned the if the Practice prohibited me from practicing in Augusta that it could be liable.

33. Attached hereto at Tab 5 is a copy of a letter to Mr. Clark from me dated February 16, 2005.

34. In this letter I attempted to point out how I had been wrongly terminated in comparison the grounds for termination listed in the employment contract.

35. I also stated that I believed I have been discriminated against and wrongly terminated.

36. I also pointed out the that the financial transactions were for recruiting a new physician for development of CPC's new office in North Augusta, and the fact that it is fully operational.

37. It was my position that any financial obligations to Doctor's Hospital were solely the responsibility of CPC.

38. That attached hereto at Tab 6 is a letter

dated February 16, 2005 to Michael Thomerson.

39. I stated that I was still working in the community and serving the same patients.
[end 4 of 6]

40. I explained how I had worked in CPC's office in North Augusta and tried to build a patient base.

41. That the practice was operating with another physician

42. That I did not breach my employment agreement with CPC

43. That CPC agrees that they terminated me involuntarily.

44. I pointed out that I signed the Promissory note about a month after I signed the Employment contract, and as a requirement for employment by CPC.

45. In my earlier declaration I indicated that I signed the HCA documents at Tab 2 on November 6, 2003, but I believe I signed them 11/16/03.

46. That I was told earlier in the October 6, 2003 letter from Paul Fisher that I had to sign the contracts from Doctor's hospital and that my employment was contingent on signing the documents.

47. I did not see the documents from HCA until the day I signed them.

48. That attached to the complaint is a letter dated April 1, 2005 from Michael Thomerson saying that I am in default for not practicing in Augusta, and making demands of payment for money.

49. That in June I was informed by Mr. Batson that Mr. Thomerson sent a demand under Georgia law that I had to arbitrate and that unless I filed an action within thirty days I would be precluded from denying the validity of the agreement including the fact that I my practice or the community I served was in Augusta, which it was not.

50. I had to relocate a practice to Augusta, and maintain privileges at Doctor's Hospital for the full period of the agreement.

51. That in about July 2005 I contacted the South Carolina Human Affairs Commission to file a charge discrimination. **[end 5 of 6]**

52. In the charge of discrimination I alleged that CPC was an employer with fifteen or more employees, that I was an employee, and that I had been the victim of unlawful discrimination.

53. That I do not have a right to sue letter yet.

54. I know that CPC still has an office in North Augusta that is fully functional, and that it is staffed by two male physicians through CPC and that Doctor's Hospital continues to lease space in the same building.

Executed this 4th day of October, 2005.

/s/ Seema L. Mishra, M.D.
Seema L. Mishra, M.D.

Prepared by:

John P. Batson
P.O. Box 3248
Augusta, Georgia 309914-3248

706-737-4040
[end 6 of 6]